

No. 12295

United States
Court of Appeals

For the Ninth Circuit.

NATIONAL BRASS WORKS, INC., a corpora-
tion,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED
SEP 21 1949

Sept - 21 - 49

PAUL P. O'BRIEN,
CLERK



No. 12295

United States
Court of Appeals
For the Ninth Circuit.

NATIONAL BRASS WORKS, INC., a corporation,

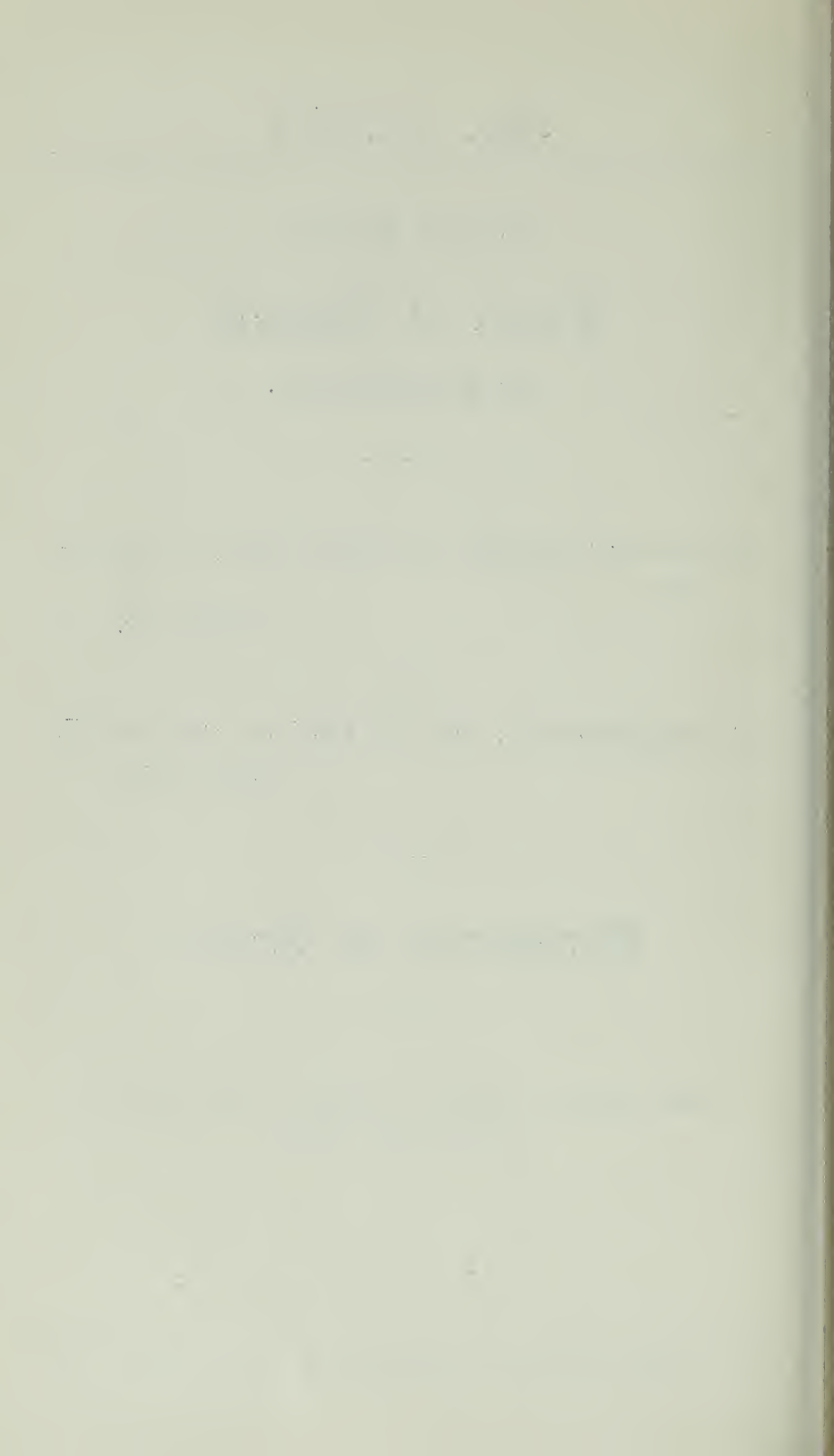
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer	11
Certificate of Clerk.....	93
Decision	84
Memorandum Opinion.....	79
Names and Addresses of Attorneys.....	1
Petition	2
Exhibit A—Notice of Deficiency.....	8
Petition for Review.....	85
Statement of Points on Which Petitioner Intends to Rely.....	94
Stipulation of Facts.....	13
Joint Exhibit 4-D-RMPR 125.....	17
Joint Exhibit 5-E-Amendment No. 3 to RMPR 125.....	72
Verification of Petition for Review.....	92

NAMES AND ADDRESSES OF ATTORNEYS

TODD W. JOHNSON,
DONALD C. McGOVERN,
433 South Spring St.,
Los Angeles 13, California,
Attorneys for Petitioner.

CHARLES OLIPHANT,
Chief Counsel,
Bureau Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
H. ARLO MELVILLE,
IRENE F. SCOTT,
Special Attorneys,
Bureau of Internal Revenue.

The Tax Court of the United States

Docket No. 13434

NATIONAL BRASS WORKS, INCORPORATED

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named Petitioner hereby petitions for redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (LA:IT:90D:PAK) dated January 21, 1947, and as a basis of its proceeding alleges as follows:

1. That Petitioner is a corporation with its office at 2140 East 25th Street, Los Angeles, California. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California.

2. A Notice of Deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the Petitioner on January 21, 1947.

3. The tax in controversy is income tax for the calendar year 1944, in the amount of \$2,911.85, which represents the deficiency determined by the Commissioner.

4. The determination of tax set forth in said

Notice of Deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing a deduction from gross income of the taxable year in the amount of \$13,071.08 paid in settlement of alleged violation of maximum price regulation of the Office of Price Administration.

(b) The Commissioner erred in failing to allow the amount of \$13,071.08 as additional cost of goods sold in determining Petitioner's gross income for the taxable year.

5. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

(a) On or about July 14, 1944, Petitioner made a payment of \$13,071.08 by its check in favor of the Treasurer of the United States. Said check was delivered to a representative of the United States Office of Price Administration who gave a receipt therefor purporting to be "in settlement of the Administrator's claim for treble damages on account of violations of ceiling prices for nonferrous castings under R.M.P.R. 125."

(b) Prior to July 14, 1944, Petitioner purchased nonferrous metals from smelters which it converted into castings to be sold to customers for resale or for use in fabricating articles for sale. "Ceiling" prices were established for such castings by regulations of the Office of Price Administration and all sale contracts were made by Petitioner in conformity with such regulations.

(c) Some time after Petitioner's "ceiling"

prices were originally fixed, the Office of Price Administration retroactively adjusted the selling prices of smelters of non-ferrous metals, as a consequence of which Petitioner received rebates from the smelters upon metal previously furnished as well as the benefit of the lower prices on subsequent purchases.

(d) At the time of the aforesaid reduction in smelter prices and as a part of such adjustments the smelters were permitted to charge an offsetting freight differential in the form of a specified price per pound from certain basing points, whereas prior thereto no such freight charge had been permitted.

(e) Regulations issued by the Office of Price Administration contained general provisions requiring Petitioner to modify its "ceiling" prices when price adjustments were made by smelters. Petitioner believed that it should be permitted to take into consideration the new freight differential as an offset to the reduction in smelter prices for purposes of modifying its "ceiling" prices. Petitioner, together with other non-ferrous foundries, sought to obtain approval of said freight offset by the Office of Price Administration. The controversy over that point had not been settled on July 14, 1944.

(f) Petitioner has at all times in good faith endeavored to comply with maximum price regulations. As soon as the reduction in smelter prices had been made, Petitioner promptly modified its "ceiling" prices on all sales contracts thereafter

obtained based upon the full price adjustment without offset for freight differential. On sales contracts already in effect Petitioner continued to bill its sales at its old "ceiling" price pending disposition of the freight question.

(g) While the foregoing price procedure on the part of Petitioner was in effect, Petitioner's books and records were examined by an investigator from the Office of Price Administration. Said investigator informed Petitioner that it had been violating maximum price regulations and had thereby laid itself open to dire penalties. Petitioner explained that it had given full effect to the gross smelter price reduction in modifying its "ceiling" prices on all new business and that it was only awaiting settlement of the freight differential question in order to ascertain the proper adjustments, if any, on deliveries under its old contracts. Petitioner's explanations were brushed aside by the investigator as mere evasions.

(h) Petitioner expressed its desire and readiness at all times to conform with the laws governing control of prices and suggested that it was ready and willing to promptly rebate to customers on its old contracts the gross smelter price reduction less freight differential. Petitioner was informed by the investigator that such procedure was not satisfactory. Petitioner thereupon suggested that it rebate to said customers the gross smelter price reduction subject to future adjustments on account of freight differential in the event of an ultimate

ruling permitting such offset. That offer was likewise rejected by the said investigator.

(i) Upon being advised by the aforesaid investigator that unless Petitioner promptly paid over to the Office of Price Administration the full amount of overcharges based upon the gross reduction in smelter prices and without offset for freight differentials, he, the said investigator, would see to it that an Administrator's suit for treble damages would be brought and that more serious consequences would follow. Petitioner thereupon, on or about July 14, 1944, paid to the Office of Price Administration the sum of \$13,071.08, representing the amount of overcharges determined by the aforesaid investigator on the basis of gross smelter price reductions without offset for any freight differentials, without, however, abandoning its right to further pursue the controversy over the question of freight differentials. Petitioner understood that if payment were thus made the persons ultimately entitled thereto would receive their proper benefits.

(j) The aforesaid payment of \$13,071.08 constituted a part of the cost of goods sold during the taxable year, or in the alternative, an ordinary and necessary business expense. The Respondent disallowed the deduction of the said amount claimed in Petitioner's return.

Wherefore, the Petitioner prays that this Court hear the proceeding and determine that Petitioner was and is not liable for any income tax for the year 1944, that Petitioner is not liable for the de-

iciency in income tax proposed by Respondent for the year 1944, and for such other and further relief as to the Court may seem meet and proper.

/s/ TODD W. JOHNSON,

/s/ DONALD C. McGOVERN,

Attorneys for Petitioner.

State of California,

County of Los Angeles—ss.

Margaret H. Ruegg, being first duly sworn, upon oath deposes and says: That she is President of the Petitioner corporation; that as such officer she is duly authorized to verify the foregoing Petition of National Brass Works, Incorporated; that she has read the foregoing Petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief and those she believes to be true.

/s/ MARGARET H. RUEGG,

President National Brass

Works, Incorporated.

Subscribed and sworn to before me this 28th day of March, 1947.

[Seal] /s/ GRACE L. RUEGG,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires February 18, 1950.

EXHIBIT "A"

Form 1279

SN-IT-7

Treasury Department
Internal Revenue Service
417 South Hill Street,
Los Angeles 13, California.

Office of Internal Revenue Agent in Charge Los
Angeles Division.

January 21, 1947.

LA:IT90D:PAK

National Brass Works, Incorporated,
2140 East 25th Street,
Los Angeles 11, California.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$2,911.85, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,

~~ROBERT E. HANNEGAN,~~

Commissioner,

By /s/ GEORGE D. MARTIN,

Internal Revenue Agent in
Charge.

PAK:vmc

Enclosures:

Statement

Form of waiver.

Statement

LA:IT:90D:PAK

National Brass Works, Incorporated,

2140 East 25th Street,

Los Angeles 11, California.

Tax Liability for the Taxable Year

Ended December 31, 1944

	Liability	Assessed	Deficiency
Income Tax	\$2,911.85	\$	\$2,911.85

In making this determination of your income tax liability careful consideration has been given to the

report of examination dated May 1, 1945, to your protest dated July 5, 1945 and to the statements made at conferences held.

A copy of this letter and statement has been mailed to your representative, Mr. Todd W. Johnson, 433 South Spring Street, Los Angeles 13, California, in accordance with the authorization contained in the power of attorney executed by you.

Adjustments to Net Income	
Net income as disclosed by return (Loss).....	(\$ 1,110.48)
Unallowable deduction:	
(a) Settlement of claim disallowed.....	13,071.08
Total	\$11,960.60
Additional deductions:	
(b) Capital stock tax.....	\$437.50
(c) Depreciation	368.08 805.58
Net income adjusted.....	\$11,155.02

Explanation of Adjustments

(a) It is held that an item in the amount of \$13,071.08, representing "Settlement of administrator's claim for treble damages on account of violation of ceiling prices," and deducted by you in your income tax return for the taxable year 1944, is not deductible from gross income within the meaning of section 23(a) or (f) of the Internal Revenue Code.

(b) It is determined that the correct deduction for capital stock tax is the amount of \$12,568.09 instead of the amount, \$12,130.59, claimed in your return, or an increase of \$437.50.

(c) A deduction is allowed in the amount of \$368.08 for depreciation on items charged to repairs in 1942 and 1943 but which have been disal-

lowed as deductions in those taxable years because they represent capital expenditures.

Computation of Income Tax			
Net income adjusted.....			\$11,155.02
Normal-tax net income.....			11,155.02
Surtax net income.....			11,155.02
Income tax:			
Normal tax:			
15% of \$5,000.00.....	\$ 750.00		
17% of \$6,155.02.....	1,046.35	\$ 1,796.35	
Surtax:			
10% of \$11,155.02.....		1,115.50	
Correct income tax liability.....			\$ 2,911.85
Income tax assessed:			
Original, account No. 9202604.....			
Deficiency of income tax.....			\$ 2,911.85

Served April 7, 1947.

[Endorsed]: Filed T. C. U. S. April 4, 1947.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4(a) and (b). Denies that the respondent erred as alleged in subparagraphs (a) and (b) of paragraph 4 of the petition.

5(a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) to (i), inclusive. Denies the allegations contained in subparagraphs (b) to (i), inclusive, of paragraph 5 of the petition.

(j). Admits that the respondent disallowed the deduction of \$13,071.08 claimed in petitioner's return as alleged in subparagraph (j) of paragraph 5 of the petition, but denies the remainder of said subparagraph.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,

ECC

Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.
E. C. CROUTER,
H. A. MELVILLE,
Special Attorneys,
Bureau of Internal Revenue.

Received May 21, 1947.

[Endorsed]: Filed T. C. U. S. May 21, 1947.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed, by and between the parties hereto, through their respective counsel, that the following facts shall be taken as true, and that the following described exhibits may be received in evidence, without prejudice to the right of either party to introduce other and further evidence not inconsistent herewith:

1. Petitioner is a corporation which filed its Federal tax returns, for the calendar year 1944, with the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California.

2. Petitioner keeps its books and records and files its Federal tax returns on the accrual basis.

3. The tax in controversy is income tax for the calendar year 1944, in the amount of \$2,911.85, which represent the deficiency determined by respondent.

4. During the period involved, petitioner was engaged in the business of making and selling non-ferrous castings of brass and bronze alloy.

5. Under the Emergency Price Control Act of 1942 (Public Law 421-77th Congress, 2nd Session) approved January 30, 1942, the Office of Price Administration was empowered to regulate the selling prices of certain products, including non-ferrous castings and the brass and bronze alloy ingots from which said castings are made.

6. The Office of Price Administration promulgated Price Regulation 202, dated August 13, 1942, effective August 19, 1942, which regulated the sell-

ing prices of brass and bronze alloy ingots and provided, in part, as follows:

“Sec. 1309.151. On and after August 10, 1942, regardless of any contract * * * no person shall sell * * * at a price higher than the maximum price established * * *”

7. Said Regulation 202 further provided:

“Sec. 1309.165-Appendix A. Maximum prices for brass and bronze alloy ingot. (a) Delivery charges. The maximum prices herein established for brass and bronze alloy ingot include transportation costs to any destination within the continental United States, not exceeding 25 cents per hundred those so included may be charged to, and paid by, weight. Actual transportation costs in excess of the buyer.”

A schedule of maximum prices for various classifications of brass and bronze alloy ingots is thereafter set forth in the said Regulation 202.

8. Petitioner, at all times material hereto, purchased its requirements of brass and bronze alloy ingots from H. Kramer & Co., Chicago, Illinois. The following described invoices for ingots purchased by petitioner from H. Kramer & Co. are attached hereto as joint exhibits, viz.:

Joint Exhibit No.	Date	Invoice No.
1-A	6-23-42	17055
	8-11-42	17515
	8-28-42	17732
	9-17-42	17917
2-B	7-31-42	17414
	9-21-42	17956

smelters & refiners of metals

GENERAL OFFICE & PLANT
BIRMINGHAM, ALABAMA
TELEPHONE CANAL 8800

CUSTOMER'S
ORDER NO. & DATE
REQUISITION NO.
CONTRACT NO.

B-502 B-549 CHICAGO

REFER TO
INVOICE

N^o 17055

INVOICE DATE JUNE 23, 1942
VENDOR'S NO.

17055

SOLD
TO
NATIONAL BRASS WORKS, INC.
2140 E. 25TH STREET
LOS ANGELES, CALIFORNIA

SHIPPED TO
AND
DESTINATION
DATE SHIPPED
CAR INITIALS AND NO.
HOW SHIPPED AND
ROUTE

FROM LOS ANGELES STOCK
P. O. B.
YOUR PLANT

PREPAID OR COLLECT

TRUCK

TERMS 1/2 of 15 10 DAYS, NET 30 DAYS

INGOTS	QUANTITY	DESCRIPTION	MARKED	UNIT PRICE	AMOUNT
229	4,003#	GRADE "A" MANGANESE BRONZE INGOT (421) APPLIES ORDER B-549 PREFERENCE RATING A-1-a - ORDER P-90, SERIAL #5336	"A"	15.00	\$ 600.45
197	4,006#	NAVY "M" INGOT (Spec. 46B8g) (245) COMPLETES ORDER B-502 PREFERENCE RATING A-1-a CERTIFICATES AN-3572299-3572303-5-36 & PD-3A's - SERIALS M-1009781-2-5	"M"	16.25	\$ 650.98
					\$ 1,251.43

PD-518A - WPB AUTHORIZATION CERTIFICATE #2449

ORIGINAL





U.K. BROWN & CO.
smelters & refiners of metals

GENERAL OFFICE & PLANT
8141 AND LOOMIS STREETS
TELEPHONE CANAL 8800

CUSTOMER'S
ORDER NO. & DATE
REQUISITION NO.
CONTRACT NO.

B-629

CHICAGO

REFER TO
INVOICE

N^o 17515

INVOICE DATE AUGUST 11, 1942

VENDOR'S NOE.

SOLD
TO

NATIONAL BRASS WORKS, INC.
2140 E. 25TH STREET
LOS ANGELES, CALIFORNIA

SHIPPED TO
AND
DESTINATION
DATE SHIPPED
CAR INITIALS AND NO.
HOW SHIPPED AND
ROUTE

FROM LOS ANGELES STOCK PREPAID OR COLLECT
P. O. B. YOUR PLANT

TRUCK

TERMS 1/2 of 1% 10 DAYS, NET 30 DAYS

REGISTER NO.	VOUCHER NO.	
F. O. B. CHECKED		
TERMS APPROVED	PRICE APPROVED	
CALCULATIONS CHECKED		
TRANSPORTATION		
FREIGHT BILL NO.	AMOUNT	
MATERIAL RECEIVED		
DATE	SIGNATURE	TITLE
SATISFACTORY AND APPROVED		
ADJUSTMENTS		
ACCOUNTING DISTRIBUTION		
AUDITED	UNIT PRICE	AMOUNT
MARKED	18.25	\$ 1,645.06
DESCRIPTION	NGW	
QUANTITY	9,014#	
INGOTS	441	
NAVY "G" INGOT (88-8-0-4) (225)		
PREFERENCE RATINGS AA & A-1-a		
USN 2.30		
PD-518A - WPB AUTHORIZATION CERTIFICATE #2449		

ORIGINAL

Inv. No. 38
Rec. by
Ext. C. K.
Price O. K.
Charge Max



smelters & refiners of metals

GENERAL OFFICE & PLANT
8121 AND LOOMIS STREETS
TELEPHONE CANAL 5000

CUSTOMER'S
ORDER NO. & DATE
REQUISITION NO.
CONTRACT NO.

B-567-618-636 CHICAGO

SENT TO
INVOICE

N^o 17732

INVOICE DATE AUGUST 28, 1942

VENDOR'S NO. 42

Inv. No.

SOLD TO NATIONAL BRASS WORKS, INC.

2140 E. 25TH STREET

LOS ANGELES, CALIFORNIA

Rec. by

Ext O.K.

Price O.K.

Charge

FROM CHICAGO (THRU LOS ANGELES STOCK)

F. O. B. YOUR PLANT

TRUCK

SHIPPED TO
AND
DESTINATION
DATE SHIPPED
CAR INITIALS AND NO.
HOW SHIPPED AND
ROUTE

TERMS 1/2 OF 15 10 DAYS, NET 30 DAYS

INGOTS	QUANTITY	DESCRIPTION	MARKED	UNIT PRICE	AMOUNT
358	7,990#	✓ COMMERCIAL 88-10-2 INGOT (215) ✓ APPLIES ORDER B-567 - USN 2.00 ✓ RATINGS A-1-a & b ORDER P-90, SERIAL #5336 ✓ NAVY "W" INGOT (245) ✓ APPLIES ORDER B-618 - USN 2.50 - RATING A-1-a ✓ COMMERCIAL 88-10-2 INGOT (215) ✓ COPPER SILICON ALLOY INGOT (NAVY 46B28) (500) ✓ ABOVE TWO ITEMS COMPLETE ORDER B-636 ✓ RATING A-1-e - ORDER P-90, SERIAL #5336 - DP 9.20 " A-1-a - " P-90, " #4982B	W"	17.75	\$ 1,418.22
433	10,124#	✓	W"	15.50	1,569.22
95	1,900#	✓	W"	17.25	327.75
5	102#	✓	W"	16.25	16.25
					\$ 3,331.77

PD-518A - WPB AUTHORIZATION CERTIFICATE #2449

THE ABOVE PRICES INCLUDE 0.75¢ PER POUND TO APPLY ON TRANSPORTATION COSTS IN
EXCESS OF 0.25¢ PER POUND. CARLOAD FREIGHT RATE FROM CHICAGO TO LOS ANGELES
\$1.17 PER CWT.

ORIGINAL



smelters & refiners of metals

GENERAL OFFICE & PLANT
5101 AND LOOMIS STREETS
TELEPHONE CANAL 9500

CUSTOMER'S
ORDER NO. & DATE
REQUISITION NO.
CONTRACT NO.

B-621-2-8-9-688 CHICAGO

REFER TO
INVOICE

N^o 17917

INVOICE DATE
1942

SEPTEMBER 17, 1942

VENDOR'S NOS

Inv. No. 43

SOLD
TO

NATIONAL BRASS WORKS, INC.

2140 E. 25TH STREET

LOS ANGELES, CALIFORNIA

Rec. by

1st

SHIPPED TO
AND

DESTINATION

DATE SHIPPED

CAR INITIALS AND NO.
HOW SHIPPED AND
ROUTE

FROM CHICAGO (THRU LOS ANGELES STOCK)

F. O. B.

YOUR PLANT

TRUCK

1/2 of 15 10 DAYS, NET 30 DAYS

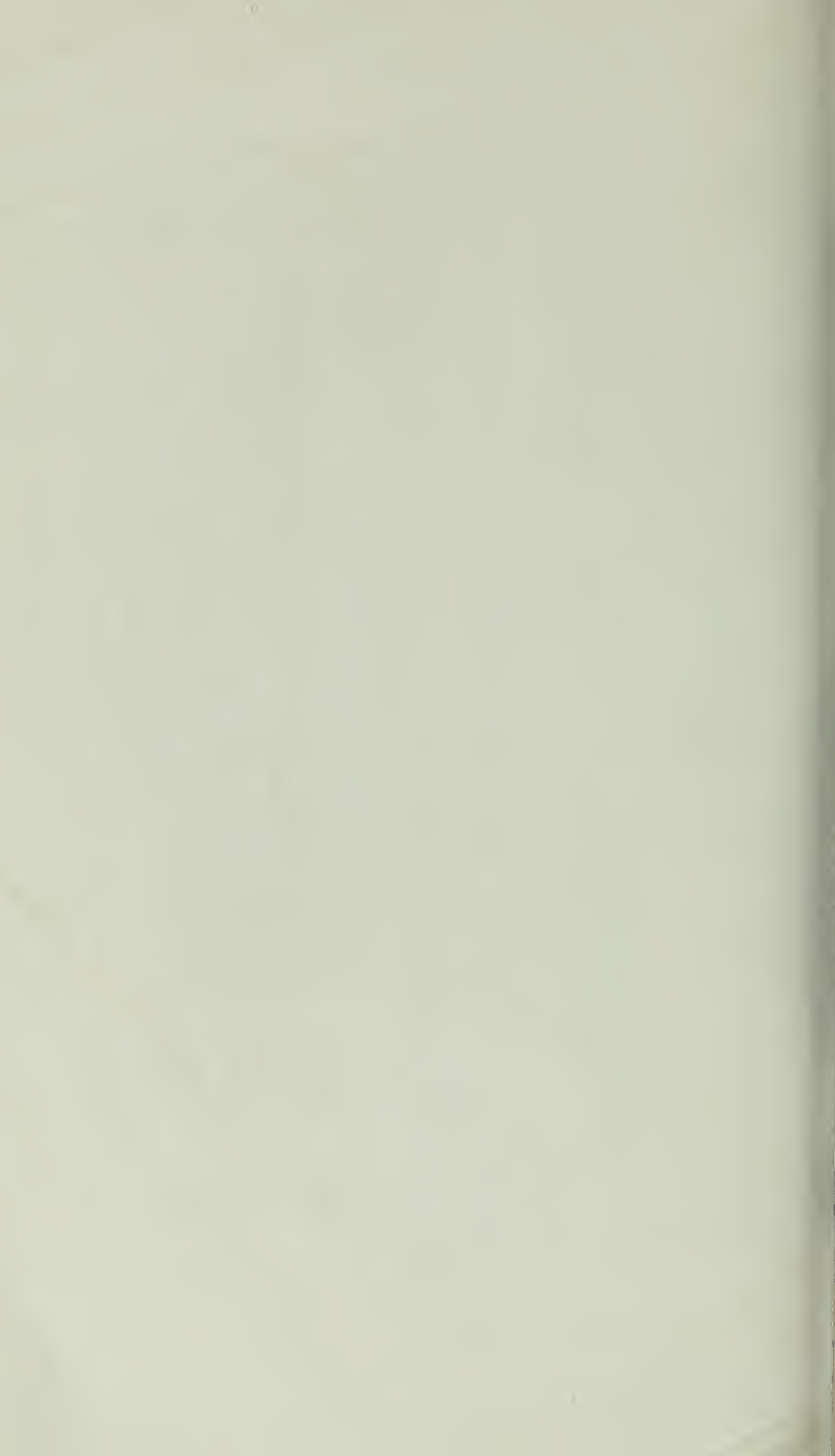
AUDITED

FINAL APPROVAL

INGOTS	QUANTITY	DESCRIPTION	MARKED	UNIT PRICE	AMOUNT
153	2,860#	GRADE "A" MANGANESE BRONZE INGOT (421) APPLIES ORDER B-621 - USN 2.90	"A"	14.50	\$ 414.70
190	3,518#	GRADE "A" MANGANESE BRONZE INGOT (421) COMPLETES ORDER B-622 - USN 2.35-1518#	"A"	14.50	510.11
53	1,000#	GRADE "A" MANGANESE BRONZE INGOT (421) COMPLETES ORDER B-629 - USN 2.30	"A"	2.90-2000# 14.50	145.00
85	1,600#	GRADE "A" MANGANESE BRONZE INGOT (421) COMPLETES ORDER B-686 - USN 2.90	"A"	14.50	232.00
13	250#	GRADE "A" MANGANESE BRONZE INGOT (421)	"A"	14.50	36.25
24	516#	NAVY "G" INGOT (225) ABOVE TWO ITEMS COMPLETE ORDER B-628 - USN	"G"	17.50 2.31	90.30
PD-518A - WPB AUTHORIZATION CERTIFICATE #4210					\$ 1,428.36

ORIGINAL

THE ABOVE PRICES INCLUDE 0.75% PER POUND TO APPLY ON TRANSPORTATION COSTS IN
EXCESS OF 0.25% PER POUND. CARLOAD - FREIGHT RATE FROM CHICAGO TO LOS ANGELES
\$1.17 PER CWT.



smelters & refiners of metals

GENERAL OFFICE & PLANT
8142 AND LOOMIS STREETS
TELEPHONE CANAL 6800CUSTOMER'S
ORDER NO. & DATE

B-567

REQUISITION NO.

CONTRACT NO.

CHICAGO

REFERS TO
INVOICE

17414

N^o

INVOICE DATE JULY 31, 1942

VENDOR'S NOS.

SOLD
TO

NATIONAL BRASS WORKS, INC.

2140 E. 25TH STREET

LOS ANGELES, CALIFORNIA

SHIPPED TO
AND

DESTINATION

DATE SHIPPED

CAR INITIALS AND NO.
HOW SHIPPED AND
ROUTE

FROM

P. O. B.

LOS ANGELES STOCK

YOUR PLANT

PREPAID OR COLLECT

TRUCK

TERMS 1/2 of 10 DAYS, NET 30 DAYS

INGOTS

QUANTITY

484

10,010#

DESCRIPTION

COMMERCIAL 88-10-2 INGOT (215)

PREFERENCE RATING A-1-a & b

PREFERENCE RATING ORDER P-90, SERIAL #5336

PD-518A - WPB AUTHORIZATION CERTIFICATE #2449 (JULY)

ORIGINAL

Inv. No.

48

Rec. by

Ext. C. K.

Filing C. K.

C. K. Max





U.K. & CO.
smelters & refiners of metals

GENERAL OFFICE & PLANT
2140 E. 25TH STREET
CHICAGO
TELEPHONE CANAL 9800

CUSTOMER'S
ORDER NO. & DATE **B-567**
REQUISITION NO.
CONTRACT NO.

REFER TO
INVOICE
N^o: 17956
INVOICE DATE **SEPTEMBER 21, 1942**
VENDOR'S NOS.

REGISTER NO.	VOUCHER NO.
P. O. B. CHECKED	PRICE APPROVED
TERMS APPROVED	PRICE APPROVED
ADJUSTATIONS CHECKED	
TRANSPORTATION	
PREPARE BILL NO.	AMOUNT
MATERIAL RECEIVED	
DATE	SIGNATURE
SATISFACTORY AND APPROVED	TITLE
ADJUSTMENTS	

SOLD TO
NATIONAL BRASS WORKS, INC.
2140 E. 25TH STREET
LOS ANGELES, CALIFORNIA

SHIPPED TO
AND
DESTINATION
DATE SHIPPED
CAR INITIALS AND NO.
DATE SHIPPED AND
ROUTE

FROM **CHICAGO (THRU LOS ANGELES STOCK)**
F. O. B. **YOUR PLANT**

TRUCK
TERMS **1/2 of 1% 10 DAYS, NET 30 DAYS**

ACCOUNTING DISTRIBUTION

AUDITED	FINAL APPROVAL
MARKED	UNIT PRICE
AMOUNT	

INGOTS	QUANTITY	DESCRIPTION	MARKED	UNIT PRICE	AMOUNT
--------	----------	-------------	--------	------------	--------

463	10,002# ✓	COMMERCIAL 88-10-2 INGOT (215)	MM	17.25	\$ 1,725.34
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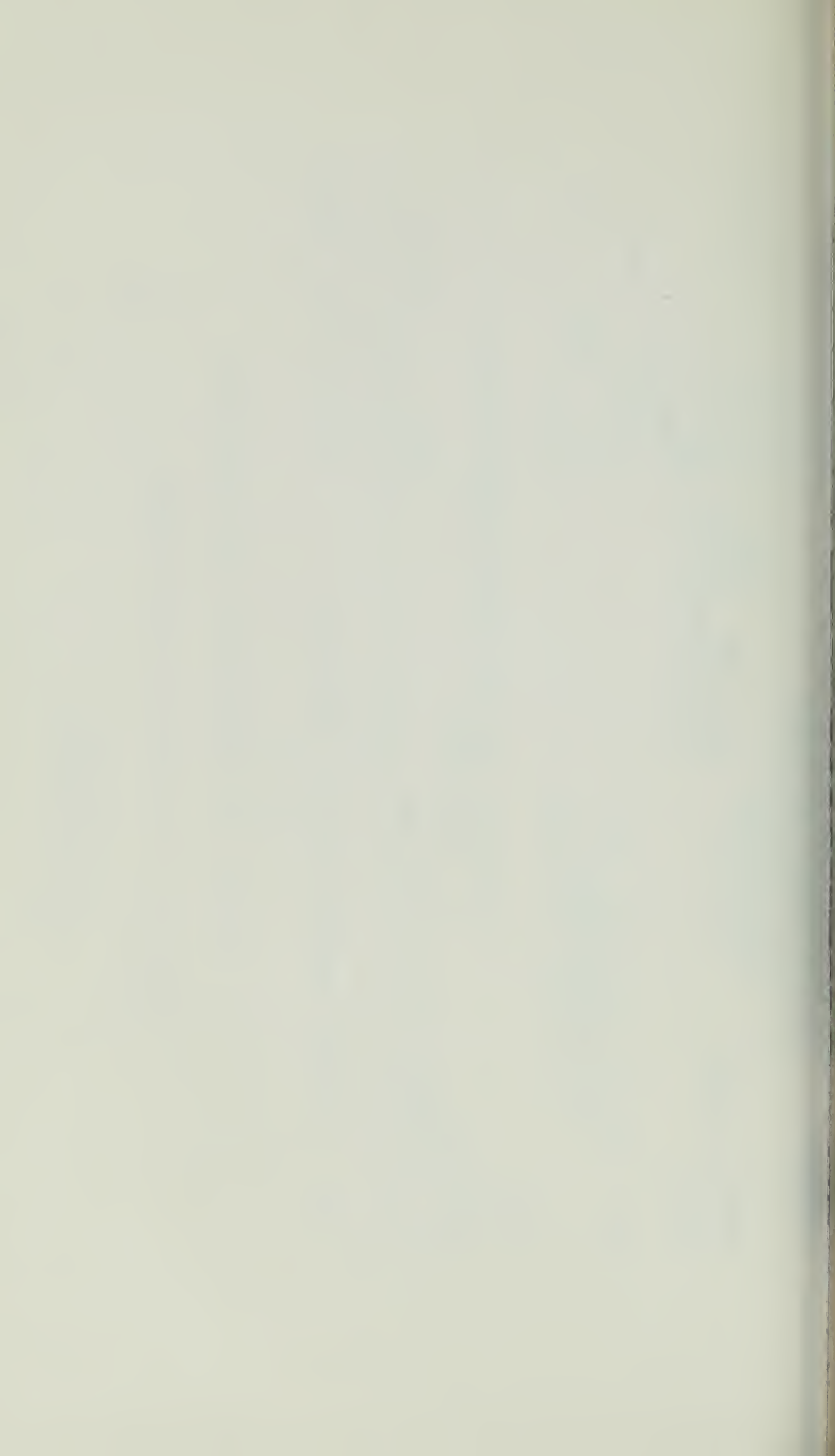
USN 2.00

PD-518A - WPB AUTHORIZATION CERTIFICATE #4210

THE ABOVE PRICES INCLUDE 0.1% PWT BOUND TO APPLY ON TRANSPORTATION COSTS IN
EXCESS OF 0.25c PER POUND. CARLOAD FREIGHT RATE FROM CHICAGO TO LOS ANGELES
\$1.17 PER CWT.

INV. No.	45
Rec. by	CA
Ext C. K.	CA
Price C. K.	MA
C. F. C.	

ORIGINAL



U. K. R. O. M. C. & C. O.

smelters & refiners of metals

GENERAL OFFICE & PLANT
2140 E. 25TH STREET
CHICAGO, ILL. 60648
TELEPHONE CANAL 8-8800

CUSTOMER'S
ORDER NO. & DATE
REQUISITION NO.
CONTRACT NO.

B-538 568 567 CHICAGO

REFER TO
INVOICE

N^o 17413

INVOICE DATE ~~11/20/42~~ 7/30/42

VENDOR'S NO.

17413

SOLD TO
NATIONAL BRASS WORKS, INC.
2140 E. 25TH STREET
LOS ANGELES, CALIFORNIA

SHIPPED TO
AND

DESTINATION

7/30/42

FROM
F. O. B.

LOS ANGELES STOCK
YOUR PLANT

PREPAID OR COLLECT

CAR INITIALS AND NO.
HOW SHIPPED AND
ROUTE

TRUCK

TERMS 1/2 of 1% 10 DAYS, NET 30 DAYS

INGOTS	QUANTITY	DESCRIPTION	MARKED	UNIT PRICE	AMOUNT
166	3,488#	SPECIAL 85-5-5-5 INGOT (1.40 to 1.50% Nickel) COMPLETES ORDER B-538	"AN"	14.00	\$ 488.32
50-	10,089#	SPECIAL 85-5-5-5 INGOT (1.40 to 1.50% Nickel) APPLIES ORDER B-568 PREFERENCE RATING A-1-a	"AN"	14.00	1,412.46
312	6,499#	PREFERENCE RATING SPECIAL 85-5-5-5 INGOT (1.40 to 1.50% Nickel) APPLIES ORDER B-567 RATING A-1-a & b ORDER P-90, SERIAL 5336	"AN" #6336 "AN"	14.00	909.86
Inv. No.					\$2,810.64
Rec. by					
Ext. C. K.					
Price C. K.					
Signature					

PD-518A - WPB AUTHORIZATION CERTIFICATE #2449 (JULY)

ORIGINAL

REGISTER NO.	VOUCHER NO.
F. O. B. CHECKED	
TERMS APPROVED	PRICE APPROVED
CALCULATIONS CHECKED	
TRANSPORTATION	
FREIGHT BILL NO.	AMOUNT
MATERIAL RECEIVED	
DATE 19	SIGNATURE
SATISFACTORY AND APPROVED	TITLE
ADJUSTMENTS	
ACCOUNTING DISTRIBUTION	
AUDITED	FINAL APPROVAL



FOR OFFICIAL USE ONLY

smelters & refiners of metals

GENERAL OFFICE & PLANT
2140 E. 25TH STREET
CHICAGO

CUSTOMER'S
ORDER NO. & DATE
REQUISITION NO.
CONTRACT NO.

17850
REFER TO
INVOICE
INVOICE DATE
VENDOR'S NO.

B-627 - B-646 CHICAGO

SOLD
TO
NATIONAL BRASS WORKS, INC.
2140 E. 25TH STREET
LOS ANGELES, CALIFORNIA

SHIPPED TO
AND
DESTINATION
DATE SHIPPED
CAR INITIALS AND NO.
TRUCK
TERMS

FROM
P. O. B.
YOUR PLANT
1/2 of 1 1/2 10 DAYS, NET 30 DAYS

CHICAGO (THRU LOS ANGELES STOCK) ACCOUNTING DISTRIBUTION

P. O. B. CHECKED	TERMS APPROVED	PRICE APPROVED
INSTRUCTIONS CHECKED	TRANSPORTATION	
PAYMENT BILL NO.	AMOUNT	
MATERIAL RECEIVED	DATE	
SIGNATURE	TITLE	
SATISFACTORY AND APPROVED	C	
ADJUSTMENTS		

AUDITED	FINAL APPROVAL
---------	----------------

INGOTS	QUANTITY	DESCRIPTION	MARKED	UNIT PRICE	AMOUNT
1,113	20,386#	SPECIAL 85-5-5-5 INGOT (115) (1.40 to 1.50% NICKEL) 545 INGOTS - 10,006# 470 " - 8,494# USN 12.30--98 " - 1,886# 1,113 INGOTS - 20,386#	MAN	13.25	\$ 2,701.14
		DELIVERED 9/10 - APPLIES ORDER B-627			
		9/11 - COMPLETES " B-627			
		DP 21.20			
		DELIVERED 9/11 - APPLIES ORDER B-646			

TO APPLY ON WPB AUTHORIZATION CERTIFICATE #4210	Inv. No.	42
FOR SEPTEMBER - PD-518A	Req. by	
	Ext. O. K.	
	Pride O. K.	
	Charge	

THE ABOVE PRICE IS FOR TRANSPORTATION COSTS IN EXCESS OF 0.05 PER LB. TO LOS ANGELES \$1.17 PER CWT.

3-C	8-1-42	17413
	9-11-42	17850

9. The Office of Price Administration promulgated Revised Maximum Price Regulation 125 (hereinafter referred to as RMPR, 125) dated January 27, 1943, effective February 1, 1943, which established maximum selling prices of non-ferrous foundry products. A copy of said RMPR 125 is attached hereto as Joint Ex. 4-D.

10. Said RMPR 125, Joint Ex. 4-D, reduced petitioner's maximum selling prices one and one-half cent per pound for the castings involved herein effective February 1, 1943. Petitioner was furnished a copy of said RMPR 125 and was aware of its provisions.

11. Petitioner did not reduce its prices to its customers as required by said RMPR 125.

12. Two O.P.A. investigators appeared at petitioner's office in the spring of 1944 and examined its books.

13. As a result of said examination, the O.P.A. alleged that petitioner had violated RMPR 125. In order to settle the O.P.A. claim, the petitioner issued its check, dated July 14, 1944, made payable to the order of the Treasurer of the United States in the amount of \$13,071.08, and was given a receipt therefore reading as follows:

“Receipt

Received this 17th day of July, 1944 check No. 3539-E dated 7/14/44 in the sum of \$13,071.08, payable to the Treasurer of United States, from National Brass Works, Inc., of Los Angeles, Califor-

nia, in settlement of the Administrator's Claim for treble damages on account of violations of ceiling prices for non-ferrous castings under RMPR 125.

/s/ WM. H. BUCKINGHAM,
Enforcement Attorney."

14. In 1944, petitioner accrued on its books said \$13,071.08 as a business expense and deducted said sum in computing its income for Federal income tax purposes. The respondent, in his statutory Notice of Deficiency, disallowed said deduction with the following explanation:

"(a) It is held that an item in the amount of \$13,071.08, representing 'Settlement of administrator's claim for treble damages on account of violation of ceiling prices,' and deducted by you in your income tax return for the taxable year 1944, is not deductible from gross income within the meaning of section 23(a) or (f) of the Internal Revenue Code."

The aforesaid disallowance by respondent gave rise to the instant appeal, and the allowability thereof is the only issue involved herein.

15. The said \$13,071.08 was based upon sales made by petitioner, at prices in excess of the maximum prices established under RMPR 125, which sales were made during the period February 1, 1943 to January 31, 1944, to customers who bought the castings for use or consumption in the course of their trade or business within the meaning of Section 205(e) of the Emergency Price Control Act of 1942.

16. The said RMPR 125 was amended from time

to time. Amendment No. 3 was dated January 13, 1944, and became effective February 1, 1944. The respondent, reserving the right to object thereto on the grounds of materiality and relevancy, stipulates that attached hereto, as Joint Ex. 5-E, is a copy of said Amendment No. 3 to RMPR 125.

/s/ DONALD C. McGOVERN,
Counsel for Petitioner.

/s/ CHARLES OLIPHANT,
ECC.

Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

Rev. MPR 125 Jan. 27, 1943

JOINT EXHIBIT 4-D

Office of War Information
Office of Price Administration

Advance Release: OPA-1542

For Thursday Morning Papers, January 28, 1943.

More than 25 million dollars will be saved the Government and heavy industry in 1943 through reductions in foundry prices of 3 cents per pound for aluminum, 3 cents per pound for magnesium, and 11½ cents per pound for copper base castings.

The reductions were ordered today by the Office of Price Administration in a revision of the price regulation for nonferrous castings, effective February 1, 1943. The title is now Revised Maximum

Price Regulation No. 125—Nonferrous Castings.

The revised regulation also exempts from official price control foundries that do less than \$12,500 worth of business in a quarter. Other changes made by today's revision include:

1. Addition of a new price base period between May 11, 1942, and January 31, 1943. The former base period of October 1-15, 1941, is also available.

2. Provision that current metal prices be used in pricing formulas when pricing castings of a different class.

3. A specific requirement that foundries file their pricing formulas with the OPA.

The action to reduce foundry prices by 3 cents per pound for aluminum and magnesium and 1½ cents per pound for copper base castings requires foundries to pass on to their customers reductions in metal costs. These reductions in metal costs were the result of price reductions made by primary, secondary and scrap metal producers both through voluntary agreement with OPA and because of OPA orders, since late in 1941. The reduction in prices ordered today affects the price of castings used for tanks, airplanes, munitions, ship's propellers and other vitally important products made or used by heavy industry, manufacturers of war equipment, the Government, and transportation companies. Savings passed on to the Government would be chiefly in reduced cost of war equipment. Savings passed on to the consumer are made possible by lowered costs to private industry.

Some foundries, the OPA said, already have

passed on the savings resulting from reduced metal costs. Where reductions based on metal cost alone are equal to the cuts ordered for the industry no change will need to be made in the foundry's maximum prices as a result of today's order. A foundry may not however, count as part of the reduction ascribed to metal cost a reduction made for any other reason, such as increased production efficiency.

Those who have not made the full reductions for each pound of their aluminum, magnesium and copper base castings respectively, will be required to lower their maximum prices for castings enough to bring about the full reduction.

Current simplification of OPA procedure is illustrated by the method used for arriving at the prices for aluminum, magnesium and copper base castings at reduced metal costs. Instead of requiring each foundry to recompute its maximum price for each casting by applying reduced metal prices in its pricing formula, the OPA computed the average net reduction in metal prices and added to this the estimated average amount the foundries applied to their metal cost for metal loss, overhead and profit. The specific reductions in the price of castings arrived at in this way have the additional advantage of permitting the buyer of castings to know the exact extent of the reduction in advance and to make a corresponding reduction in the price of his products to the ultimate consumer.

An important feature of the revised regulation is the exemption from price control of the foundries that do less than \$12,500 worth of business in a

quarter. This removes from nearly all provisions of the regulation more than half of the foundries in the industry. These foundries, however, produce only about 3 per cent of the nonferrous castings, according to the OPA. The smaller foundries lack the precision equipment capable of meeting many of the stringent war requirements and are required to compete for the small amount of civilian business or the more simple war castings. Competition, therefore, places sufficient restrictions upon prices charged by these foundries.

When a foundry sells \$12,500 worth of castings or more in any quarter it will come under all provisions of the revised regulation. If it sells less than \$12,500 it will need only to file a simple report with the OPA each quarter year.

Addition of a second base period (May 11, 1942, to January 31, 1943) was made because it will establish definite base prices for the great number of castings sold, contracted for, or delivered in that period. After February 1, 1943, none of the castings sold in either this additional period or the October 1-15, 1941, period can be sold at a higher price than the most recent maximum prices established, reduced by the proper metal reduction. Where the sale is to the same buyer the maximum price is the most recent price to that buyer. At the same time, "the most recent price" must be one that was in compliance with the formula-determined prices based on October 15, 1941, costs and profits.

The maximum prices of castings that were not sold in either base period are to be figured by us-

ing the pricing formula used by the foundry on October 15, 1941, using the same costs as were used on that date except for metal cost which must be figured at current metal prices.

Under the revised regulation a clear demarcation is made as to which machined castings are within the provisions; the line is generally drawn on the basis of certain, stated percentages of machining cost in proportion to the total cost.

A brief summary of the regulation is being sent to the nonferrous foundry industry and copies of it will be available at OPA regional offices, the OPA said.

(Document No. 10236)

Part 1395—Nonferrous Foundry Products
[Rev. MPR 125¹]

Nonferrous Foundry Products

The title, preamble, and §§ 1395.1 to 1395.11, inclusive, as heretofore amended, are renumbered and amended to read as set forth below. “Revised Maximum Price Regulation 125—Nonferrous Castings.”

In the judgment of the Price Administrator the prices of nonferrous castings have risen and are threatening further to rise to an extent and in a manner inconsistent with the purposes of the Emergency Price Control Act of 1942, as amended. The Price Administrator has ascertained and given due consideration to the prices of nonferrous castings

¹F. R. 3202, 3990, 7249, 8878, 8948, 10780.

prevailing between October 1 and October 15, 1941, and has made adjustments for such relevant factors as he has determined and deemed to be of general applicability. So far as practicable, the Price Administrator has advised and consulted with representative members of the industry which will be affected by this regulation.

In the judgment of the Price Administrator the maximum prices established by this Revised Maximum Price Regulation No. 125 (referred to herein as "this regulation") are and will be generally fair and equitable and will effectuate the purposes of said Act. A statement of the considerations involved in the issuance of this regulation is issued simultaneously herewith and has been filed with the Division of the Federal Register.*

Therefore, under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, and in accordance with Revised Procedural Regulation No. 12 issued by the Office of Price Administration, this regulation is hereby issued.

Sec. 1395.1. Exclusions.

Sec. 1395.2. Prohibition against sales of nonferrous castings at prices higher than maximum prices.

Sec. 1395.3. Maximum prices and report requirements for nonferrous castings sold or delivered on

*Copies may be obtained from the Office of Price Administration.

²⁷ F.R. 8961.

or after February 1, 1943—Castings the same, or of the same class as those sold or contracted to be sold by the seller during the period from October 1 to October 15, 1941, inclusive, or sold, contracted to be sold or delivered by the seller during the period from May 11, 1942, to January 31, 1943, inclusive.

Sec. 1395.4. Maximum prices and report requirements for nonferrous castings sold or delivered on or after February 1, 1943—Castings of a class different from any casting sold or contracted to be sold during the period from October 1 to October 15, 1941, inclusive, and different from any casting sold, contracted to be sold or delivered during the period from May 11, 1942, to January 31, 1943, inclusive.

Sec. 1395.5. Developmental contract and subcontract.

Sec. 1395.6. Transfer of business or stock in trade.

Sec. 1395.7. Less than maximum prices.

Sec. 1395.8. Export sales.

Sec. 1395.9. Federal and State taxes.

Sec. 1395.10. Adjustable pricing.

Sec. 1395.11. Prohibited evasion practices.

Sec. 1395.12. Applications for adjustment or petitions for amendment.

Sec. 1395.13. Records and reports.

Sec. 1395.14. Enforcement.

Sec. 1395.15. Definitions.

Sec. 1395.16. Geographical applicability.

Sec. 1395.17. Effective date.

Sec. 1395.18. Appendix A: Maximum prices for

nonferrous castings sold during the period May 11, 1942, to January 31, 1943, inclusive.

Sec. 1395.19. Appendix B: Form OPA 677:115a
—Report on net sales for foundries with sales of less than \$12,500 in preceding quarter year.

Sec. 1395.20. Appendix C: Form OPA 677:115b
—Application for adjustment of maximum prices of an individual casting or a group of castings sold at the same price.

Sec. 1395.21. Appendix D: Form OPA 677:115c
—Buyer's report on above application.

Sec. 1395.22. Appendix E: Form OPA 677:115d
—Application for adjustment of maximum prices of all castings.

Sec. 1395.23. Appendix F: Form OPA 677:115e
—Buyer's report on above application.

Authority: §§ 1395.1 to 1395.23, inclusive, issued under Pub. Laws 421 and 729, 77th Cong. and E.O. 9250, 7 F.R. 7871.

§1395.1. Exclusions. (a) This regulation shall not apply to sales or deliveries of nonferrous castings if, before February 1, 1943, such casting have been received by a carrier, other than a carrier owned or controlled by the seller, for shipment to the buyer.

(b) Nothing in this regulation or in the General Maximum Price Regulation³ shall apply to any sale,

³⁷ F.R. 3153, 3330, 3666, 3990, 3991, 4339, 4487, 4659, 4738, 5027, 5276, 5192, 5365, 5445, 5565, 5484, 5775, 5784, 5783, 6058, 6081, 6007, 6216, 6615, 6939, 6794, 7093, 7322, 7454, 7758, 7913, 8431, 8881, 9004, 8942, 9435, 9615, 9616, 9732, 10155, 10454; 8 F.R. 371.

contract to sell, or delivery of nonferrous castings by any person whose total sales of nonferrous castings were less than \$12,500 for the preceding three months period ending on the last day of December, March, June or September, as the case may be, (here called "calendar quarter year") except that a report shall be filed with the Office of Price Administration at Washington, D. C., by the seller on Form OPA-677:115a (set forth as § 1395.19 of this regulation) on the twentieth day of January, April, July and October of each year, stating (1) total dollar net sales, with the best available estimate of net sales of nonferrous castings covered by this regulation, in dollars and pounds, for the preceding calendar quarter year and (2) number of employees in the foundry for the last week of the preceding calendar quarter year.

(c) This regulation shall not apply to sales, contracts to sell or deliveries of:

(1) Products listed in Appendix A, § 1499.166 of Maximum Price Regulation No. 188, as amended,⁴ or

(2) Products covered by Maximum Price Regulation No. 261⁵ as defined in subparagraph (2), § 1346.215 of that regulation, or

(3) Type used for printing, or

(4) Nonferrous castings machined to such extent that the cost of machining (all price elements other than profit) is more than 25% of the total

⁴⁷ F.R. 5872, 8943, 8948, 10155, 8 F.R. 537.

⁵⁷ F.R. 9187.

cost (all price elements other than profit) of the rough casting plus the cost of machining, when (i) the castings are subject to a price regulation other than the General Maximum Price Regulation, and/or (ii) the castings are sold by a person who does not produce the rough casting and who, further, is not a subsidiary or affiliate of the producer of the rough casting, or

(5) Nonferrous castings machined to such extent that cost of machining is more than 50% of the total cost, as provided in the preceding subparagraph (4) where the casting is a component part or subassembly of (i) aircraft, ammunition, armored trains, artillery, balloon barrage equipment, bombs, bomb sights, caissons, fire control equipment, gas masks, grenades, gun sights, military bridges, mines, mortars, projectiles, pyrotechnics, small arms, ships and boats and torpedoes; and (ii) amphibians, armored vehicles, automobiles, tanks, trailers and trucks, for military purposes, sold, contracted to be sold or delivered to the United States or any agency thereof, or to the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to promote the defense of the United States," or any agency of any such government. The term "component parts and subassemblies" includes all metallic and nonmetallic component parts, adjuncts, and accessories which have been machined or fabricated. The term does not include raw or unfinished materials

or any other materials which are in such form as to permit their use in the manufacture of products other than those set forth in this subparagraph, or

(6) Bushings and bearings machined to such extent that the cost of machining is more than 25% of the total cost, as provided in the preceding subparagraph (4), irrespective of whether such bushings and bearings are subject to a price regulation other than the General Maximum Price Regulation. Where percentage of machining cost is referred to in this or the preceding subparagraphs (4) and (5) and a toll or conversion agreement is involved in which the seller does not buy or sell the material used for the casting, the metal cost shall nevertheless be included at current maximum prices in figuring whether the 25% or 50% has been exceeded, or

(7) Finished replacement parts sold as finished replacement parts by a person who does not produce the parts, or who further, is not a subsidiary or affiliate of the producer of the parts.

1395.2. Prohibition against sales of nonferrous castings at prices higher than maximum prices. On and after February 1, 1943, regardless of any contract, agreement or other obligation:

(a) No person shall sell or deliver any nonferrous casting at a price higher than the maximum price established by this regulation. (See §1395.15 (a) for what is meant by a "person" and a "nonferrous casting" under this regulation.)

(b) No person in the course of trade or business shall buy or receive any nonferrous casting at

a price higher than the maximum price. However, if the buyer obtains from the seller a written statement sworn to by the seller or a responsible official of the seller, that to the best of the seller's knowledge, information and belief, the price charged is not higher than the maximum price established by this regulation, and if in such case the buyer has no knowledge of the maximum price and no reason to doubt the accuracy of the statement, the buyer will be considered to have complied with this paragraph. Further, the buyer will be considered to have obtained this statement if:

(1) He obtains a letter or other written statement to the buyer sworn to by the seller or a responsible official of the seller, to the effect that the prices on all invoices to be issued will not be higher than the applicable maximum prices established by this regulation and that the seller's methods of figuring prices has been so established as to achieve this result, and

(2) The seller stamps an appropriate statement on each invoice or bill.

(c) No person shall agree, offer, solicit, or attempt to do any of the acts prohibited in paragraphs (a) or (b) of this section.

(d) Where the contract of sale has been entered into before February 1, 1943, the parties to the contract, until March 1, 1943, may make and accept deliveries of the castings required or specified in the contract and the seller may render bills or invoices for the castings to the buyer at the contract price, but the price shall be adjusted in accordance with

the maximum prices established by this regulation within a period not to exceed 30 days after the billing or invoicing.

§ 1395.3. Maximum prices and report requirements for nonferrous castings sold or delivered on or after February 1, 1943—Castings the same, or of the same class, as those sold or contracted to be sold by the seller during the period from October 1 to October 15, 1941, inclusive, or sold, contracted to be sold or delivered by the seller during the period from May 11, 1942 (the effective date of Maximum Price Regulation No. 125) to January 31, 1943, inclusive.

(See § 1395.15 (a) .(4) for what is meant by “the same class” of castings). The maximum price shall be figured as follows:

(a) First, take as the base the most recent net price at which the seller sold or contracted to sell the castings or class of castings (if the most recent price was established during October 1 to October 15, 1941, inclusive) or sold, contracted to sell or delivered the castings or class of castings (if the most recent price was established during May 11, 1942, to January 31, 1943, inclusive). “Net price” here means the price after the seller’s usual adjustment for rate of delivery, extra charges, cash discounts or other allowances.

(1) If the sale or delivery is to the same buyer who bought or contracted to buy the casting or a casting of the same class between October 1 to October 15, 1941, inclusive, or who bought, con-

tracted to buy or obtained delivery of the casting or castings of the same class between May 11, 1942, and January 31, 1943, inclusive, then the base price must be the most recent net price to that specific buyer, rather than the most recent net price to any other buyer of the same casting or casting of the same class.

(2) This base price must be a price which fully meets the requirements of Maximum Price Regulation No. 125 as in effect at the time of the sale, contract to sell or delivery, as the case may be. For convenience in checking the requirements, there is included in this regulation, as § 1395.18, a statement of the maximum prices in effect before February 1, 1943. If the most recent price was not figured as required at the time by Maximum Price Regulation No. 125, the price shall be corrected to arrive at the proper base price.

(b) Second, reduce the base price by the amounts stated below:

Reductions Per Pound (Cents)

(1) If the casting is made from copper or copper base alloys, $1\frac{1}{2}$.

(2) If the casting is made from aluminum or aluminum base alloys, 3.

(3) If the casting is made from magnesium or magnesium base alloys, 3.

However, if the base price already reflects reductions made because of reductions in the maximum prices of metals or alloys since September 30, 1941, and full showing is first made to the Office of Price

Administration at Washington, D. C., of that fact, the above specified reductions need only be made to the extent that the previous reductions are less than the amounts set forth above. The showing may be made by letter, or the Office of Price Administration may provide a form for the purpose. Unless and until the above showing is disapproved, the reductions need not be made. However, in the event of disapproval and within ten days after the disapproval, refund must be made of the amount of the reductions. In the case of a "toll," "conversion," or "service" agreement, in which the metal or part of the metal for the casting is required to be sold or otherwise furnished to the seller by the buyer or any person on the buyer's behalf, the reductions under subparagraphs (1), (2) and (3) above need only be made to the extent of metal furnished by the seller.

(c) Third, if, after January 31, 1943, a change in alloy between types within one of the groups of alloys listed below is imposed either by the buyer or by order of a government agency then the difference in price of metal as of the date of re-pricing, plus thirty per cent of the amount of such difference, shall be deducted from or added (as the case may be) to the base price of the casting to arrive at the maximum price per pound in accordance with paragraphs (a) and (b) above.

Copper base alloys. (Numbers refer to numbers used in Maximum Price Regulation No. 202,⁶ § 1309.165.)

⁶7 F.R. 6421, 7247, 8948, 9427.

Group No. 1—85-5-5-5 or 88-10-2 Groups, (OPA Nos. 100-256, inclusive, and similar alloys).

Group No. 2—80-10-10 Group, (OPA Nos. 295-326, inclusive, and similar alloys).

Group No. 3—Yellow Brass Group, (OPA Nos. 400-409, inclusive, and similar alloys).

Group No. 4—Nickel Alloys Group, (OPA Nos. 410-414, inclusive, and similar alloys).

Group No. 5—Aluminum Bronze Group, (OPA No. 415 and similar alloys).

Group No. 6—Manganese Bronze Group, (OPA Nos. 420-424, inclusive, and similar alloys).

Group No. 7—Silicon Bronze Group, (OPA No. 500 and similar alloys).

Aluminum base alloys. (Numbers are those used in customary trade practice.)

Group No. 1—8% Copper Group, (Nos. 12, 112 and similar alloys).

Group No. 2—4% Copper Group, (No. 195, and similar alloys).

Group No. 3—Copper Silicon Group, (No. 108, and similar alloys).

Group No. 4—Copper Silicon Magnesium Group, (Nos. 355, 356, and similar alloys).

Group No. 5—Copper Nickel Magnesium Group, (No. 132, 142 (Y alloys) and similar alloys).

Group No. 6—5-13% Silicon Group, (No. 43, 47 and similar alloys).

Group No. 7—4-12% Magnesium Group, (No. 214, 218, 220, and similar alloys).

§ 1395.4. Maximum prices and report require-

ments for nonferrous castings sold or delivered on or after February 1, 1943—Castings of a class different from any casting sold or contracted to be sold by the seller during the period from October 1 to October 15, 1941, inclusive, and different from any casting sold, contracted to be sold or delivered by the seller during the period from May 11, 1942, to January 31, 1943, inclusive—(a) How maximum price is figured on the first sale, contract to sell or delivery of each such casting on or after February 1, 1943. The maximum price for such castings shall be a net price (after the seller's usual adjustment for rate of delivery, extra charges, cash discounts or other allowances) not higher than that figured by using the pricing formulas or methods of figuring the price that were used on October 15, 1941, by the seller, or if the formulas were not used on that date, then the formulas used on the most recent date before October 15, 1941, on which the formulas were used. If the seller was not in business on or before October 15, 1941, and is not a transferee under § 1395.6 of this regulation, or if for any other reason the seller had no formula, or is unable to reduce it to writing or formulate it as required in this regulation, then the seller shall prepare a formula and proceed with filing and obtaining approval as generally required under paragraph (c) of this section. The pricing formula shall be applied, in figuring the maximum price of each casting, as follows:

- (1) Direct labor cost. To the extent that the

seller's pricing formulas include or are based on direct labor costs, the seller shall use labor costs figured and applied as follows:

(i) The seller shall use no more than the identical straight time and overtime labor rates used in his pricing formula on October 15, 1941, for each class of labor. Examples of classes of labor are molders, coremakers, or cleaners.

(ii) If the seller employs labor of a particular class not employed in the foundry on October 15, 1941, the seller shall apply no more than the straight time and overtime rates prevailing on that date for that class of labor in the locality in which the casting is produced.

(iii) If, on October 15, 1941, machine hour, piece or average rates were used, no more than the identical machine hour, piece or average rates must be used; for example, if the rate was \$1.00 per hour on a standard squeezer machine, then that rate must be used now.

(iv) In deciding whether items of labor cost are direct or indirect, the seller shall employ the same classes and considerations that he used on October 15, 1941. For example, if the seller treated cleaning labor as indirect labor on October 15, 1941, he must treat it as indirect labor for this figuring of the price.

(v) The labor rates as limited by the preceding subdivisions (i) to (iv) shall be applied to the number of hours estimated to be required on the basis of previous production experience.

(2) Cost of metals. To the extent that the pricing formulas include, or are based on prices paid for metals the seller shall apply no more than the current metal prices, not in excess of the current maximum prices established by the Office of Price Administration) for the metal used in the casting being priced to the quantities of metals estimated to be required on the basis of previous production experience.

(3) Overhead (burden) rates. To the extent that the pricing formulas include overhead or burden, the seller shall use no overhead or burden higher than that used in his pricing formulas on October 15, 1941, applied in the identical manner that he used on that date. For example, if the seller used 2c per pound for overhead on October 15, 1941, he shall use no more than 2c per pound today; or if the seller added 50% to direct labor for burden on October 15, 1941, he shall add no more than 50% to direct labor for burden today.

(4) Other factors. To the extent that the pricing formulas include or are based on other elements or costs, the seller shall use the same elements or costs in effect on October 15, 1941, applied in the same manner as applied on that date, except that the seller may use additional or different elements or costs or applications thereof so long as a higher price does not result.

(5) Mark-up, margin or profit. The seller shall use no more than the mark-up, margin, or profit which he used on October 15, 1941, applied in the identical manner which he used on that date. For

example, if the seller added to total costs 2c per pound for profit on October 15, 1941, he shall add no more than 2c per pound today; if the seller added 6% to total costs on October 15, 1941, for profit, he shall add no more than 6% to total costs for profit today.

(b) Subsequent sales, contracts to sell, or deliveries of such castings or castings of the same class. The price at which the first sale, contract to sell or delivery is made shall be the seller's maximum price for all subsequent sales, contracts to sell or deliveries of the same casting or casting of the same class, except that:

(1) If the price was in excess of the maximum price permitted under this regulation, the price shall be reduced to arrive at the proper maximum price.

(2) The seller may re-figure the maximum price for clerical errors but only upon first making proper showing by letter or other writing, of the details of such errors to the Office of Price Administration at Washington, D. C., and obtaining approval of the corrections from that Office; and

(3) Adjustment shall be made for changes in alloy as set forth in § 1395.3 (c) of this regulation.

(c) Filing and approval of pricing formulas and prices. (1) Each person selling nonferrous castings on or after February 1, 1943, shall, (to the extent he has not already done so) file, on or before March 1, 1943, with the Office of Price Administration at Washington, D. C., his pricing formulas or methods of calculating price. These formulas

or methods shall be in such detail as is satisfactory to the Office of Price Administration. The formulas must conform exactly to the seller's practice on October 15, 1941, or on the most recent date before October 15, 1941, on which the formulas were used. If the seller was not in business on or before October 15, 1941, and is not a transferee under § 1395.6 of this regulation, or if for any other reason the seller had no formula or is unable to reduce the formula to writing or formulate it as required by this regulation, then the formula to be filed shall be the formula that, in the opinion of the Office of Price Administration, would have been used on October 15, 1941, had the seller conducted business on that date. The formulas must, further, be in such detail that if the Office of Price Administration is furnished the factors peculiar to the individual casting (such as the time required for the different kinds of labor, the alloy, the quantity ordered, etc.), the Office can arrive at the same maximum price as the seller.

(2) The factors to be included in the formulas may include those listed below and such other factors as were employed. The factors may be included singly, or several factors may be combined if that was the seller's practice; for example, it may have been the seller's practice in some cases to figure all factors except metal cost at a flat amount per pound or per day. As further examples, the seller may have figured all burden and overhead at a flat amount per pound or as a single percentage of all direct labor combined, or as a single per-

centage of the direct molding labor. If different combinations are used in figuring prices of different alloys or of different types of castings, all the combinations should be listed with an explanation of how and when they are applied. It is essential that every factor or every combination of factors which was used by the seller in establishing the price for any casting, be stated exactly:

(i) Metal costs—(a) Price of the metal. The formula should specify whether purchase price, delivered price, or delivered price plus handling charges was used.

(b) Metal loss. This can be stated as an allowance in cents per pound or percentage for each alloy separately, or as an average, if an average was used.

(c) Melting cost. The particular allowance shall be given for each alloy, or the average if an average allowance was used.

(d) Yield. If this factor was used, an explanation should be given of how it was employed.

(ii) Direct labor. State for each class, such as molders, coremakers, cleaners, inspectors, machine operators, etc.

(a) Wage rates. Give standard and overtime separately; state the average rate, if an average was used, or all individual rates within each class, with the type of casting or production to which each rate applied.

(b) Burden. State in percentage of labor costs or cents per pound or per machine hour; if an av-

erage rate was used, it should be so stated; if individual rates were used, the type of casting or production to which applied should be stated.

(iii) Defectives. State the individual allowances, with method of application and group to which it applied; if average allowance was used, that average should be stated.

(iv) Shop overhead. Furnish this item, if used separately from burden (ii) (b) or to cover burden or burden and direct labor or total foundry cost up to this point: state flat amounts in cents per pound, dollar per hour, or dollar per day or percentage, and where applied.

(v) Administrative and selling overhead if used separately from burden (ii) (b) and shop overhead (iv). State percentage or flat amount and where applied.

(vi) Other costs. For example, amount charged for heat treating, X-rays, delivery, etc. These should be specified and a statement included as to how and where applied.

(vii) Adjustments for rate of delivery, extra charges, cash discounts or other allowances.

(viii) Rate of profit. State the flat amount or percentage and how applied.

(3) If a seller commenced sales of nonferrous castings on or after February 1, 1943, he shall file a report similar to the report required by the preceding subparagraph (1) of this paragraph (c) within 30 days after his first quotation of prices.

(4) When a formula is filed and rates are re-

ported by a seller who was not in business on or before October 15, 1941, and who is not a transferee under § 1395.6 below, or by any other person who had no formula on or before October 15, 1941, or who is unable to reduce his formula to writing in a manner that clearly describes the method of pricing to the satisfaction of the Office of Price Administration, prices calculated in accordance with the formula and rates may be quoted or charged unless and until the Office of Price Administration disapproves the formula or rates or requires a new filing of formula or rates.

(5) The Office of Price Administration may disapprove, in writing, the formula filed or the rates reported in the cases mentioned in subparagraph (4) above, and the prices resulting from their use. Upon such disapproval the seller shall file a revised formula or rates in accordance with directions which the Office of Price Administration shall state at the time of the disapproval. In disapproving any proposed formula or rates, the Office of Price Administration may require refunds on all deliveries made at prices calculated by the use of the formula or rates. The disapproval of the formula or rates, or the requirement of refunds shall, upon request of the seller, be embodied in an order.

§ 1395.5 Developmental contract and subcontract.

(a) No developmental contract or subcontract shall be exempt from any provisions of this regulation except upon full compliance with the provisions of, and to the extent provided in, this paragraph. For

the purposes of this paragraph a contract or subcontract is considered to be "developmental" only during the period required for the selection of a suitable casting by the buyer or for the accumulation of sufficient production experience by the seller to permit a fair estimate of the manufacturing costs, or both.

(b) The contract or subcontract must be certified in writing to the Office of Price Administration at Washington, D. C., by the United States or an agency thereof or by the buyer and seller, as being developmental, and a report must be filed as required in paragraph (d) of this section. This regulation shall not apply to any nonferrous casting produced pursuant to such contract or subcontract.

(c) After the Office of Price Administration has determined, upon consultation or communication with the appropriate government agency or with the buyer or seller, that the period necessary for development has expired, and has in writing so notified such agency or the buyer and seller, as the case may be, this regulation shall apply to all subsequent sales and deliveries of the nonferrous castings.

(d) Within ten days after entering into any developmental contract or subcontract, the seller shall file a report, verified by the buyer, with the Office of Price Administration at Washington, D. C., containing a description of the nonferrous casting to be manufactured, a summary of the terms of the contract or subcontract, including all pricing

provisions, a short statement of the production plans of which the contract is a part and an estimate of the expected duration of such developmental work. For any such contract or subcontract in effect on February 1, 1943, the report shall be filed before February 20, 1943. This paragraph is subject to the exception, however, that in the case of a contract or subcontract classified as "secret" and certified as a "secret" contract to the Office of Price Administration by the United States or any agency thereof, or by the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to promote the defense of the United States" or any agency of any such government, there need be reported only that portion of the required information, if any, that is not classified "secret".

(e) No contract based on cost plus a percentage of cost, or cost plus a fixed fee, which results in a price higher than the applicable maximum price, is permitted under this regulation unless the contract qualifies as a developmental contract under the provisions of this § 1395.5. For example, the first sale or delivery of a casting under a cost-plus contract other than a developmental contract, where the maximum price for the casting is established by § 1395.4(a), will fix the maximum price for all subsequent sales, contracts to sell or deliveries of the casting, even though the cost-plus contract provides for a series of transactions.

§ 1395.6 Transfer of business or stock in trade. If the business, assets or stock in trade of any business dealing in nonferrous castings were or are sold or otherwise transferred after October 15, 1941, and the transferee carries on the business, or continues to deal in nonferrous castings in the same competitive area and in an establishment separate from any other establishment previously owned or operated by the transferee, the transferee shall be subject to the same maximum prices as those to which the transferor would have been subject if no such transfer had taken place, and the transferee's obligation to keep records sufficient to verify such prices shall be the same as that of the transferor. The transferor in such cases shall either preserve and make available, or turn over to the transferee all records of transactions that are necessary to enable the transferee to comply with the provisions of this regulation.

§ 1395.7 Less than maximum prices. Lower prices than those provided in this regulation may be charged, demanded, paid or offered.

§ 1395.8 Export sales. The maximum price at which a person may export a nonferrous casting shall be figured in accordance with the provisions of the Revised Maximum Export Price Regulation⁷ issued by the Office of Price Administration.

§ 1395.9 Federal and state taxes. Any tax upon or incident to the sale, delivery, processing or use of a nonferrous casting, imposed by any statute of the

⁷ F.R. 5059, 7242, 8829, 9000, 10530.

United States or any statute or ordinance of any state or subdivision thereof, shall be treated as follows in figuring the seller's maximum price for such casting, except that the tax on the transportation of all property (excepting coal) imposed by section 620 of the Revenue Act of 1942, shall, for purposes of figuring the applicable maximum price, be treated as though it were an increase of 3% in the amount charged by every person engaged in the business of transporting property for hire:

(a) As to a tax in effect between October 1 to October 15, 1941, inclusive or between May 11, 1942 to January 31, 1943, inclusive. (1) If the seller paid the tax, or if the tax was paid by any prior seller irrespective of whether the amount was separately stated and collected from the seller, but the seller did not customarily state and collect separately from the purchase price during the period from October 1 to October 15, 1941, inclusive or between May 11, 1942, to January 31, 1943, inclusive, the amount of the tax paid by him or tax reimbursement collected from him by his seller, the seller may not collect such amount in addition to the maximum price, and in such case shall include such amount in figuring the maximum price under this regulation.

(2) In all other cases if, at the time the seller figures his maximum price, the statute or ordinance imposing such tax does not prohibit the seller from stating and collecting the tax separately from the purchase price, and the seller does state it sepa-

rately, the seller may collect, in addition to the maximum price, the amount of the tax actually paid by him or an amount equal to the amount of tax paid by any prior seller and separately stated and collected from the seller by the seller from whom he purchased, and in such case the seller shall not include such amount in figuring the maximum price under this regulation.

(b) As to a tax or increase in a tax which becomes effective on or after February 1, 1943. If the statute or ordinance imposing the tax or increase does not prohibit the seller from stating and collecting the tax or increase separately from the purchase price, and the seller does separately state it, the seller may collect, in addition to the maximum price, the amount of the tax or increase actually paid by him or an amount equal to the amount of tax paid by any prior seller and separately stated and collected from the seller by the seller from whom he purchased.

§ 1395.10 Adjustable pricing. It is permitted under this regulation to provide in a contract that the price shall be adjustable to a price not higher than the maximum price in effect at the time of delivery.

§ 1395.11 Prohibited evasion practices—(a) General. Any practice which is a device to obtain the effect of a higher-than-ceiling price without actually raising the price is as much a violation of this regulation as an outright over-ceiling price. This applies to devices making use of commissions, serv-

ices, transportation arrangements, premiums, special privileges, tying-agreements, trade understandings, and the like.

(b) Specific practices. The following are among the specific practices prohibited:

(1) Obtaining the effect of a higher price by changing credit practices or cash discounts from what they were during the base period or on the base date. This includes reducing the cash discount period, decreasing credit periods, or making greater charges for extension of credit.

(2) Obtaining the effect of a higher price by refusing to sell on a delivered basis and insisting on selling on an f.o.b. shipping point basis, or vice versa.

(3) Quoting a gross price above the maximum price even if accompanied by a discount the effect of which is to bring the net price below the maximum price.

(4) Obtaining the effect of a higher price by making minor changes in castings having established prices; by requiring a buyer to furnish material for processing not in accordance with previous practice; by entering into a joint venture with any other person subject to this Regulation, for cross-selling or cross-purchasing; by reducing the period of any guaranty or warranty; by undervaluing commodities received in connection with the sale; by distorting estimates of time, material, defectives or other factors in figuring a price; or by making any other change in terms or conditions of sale or contract.

§ 1395.12 Applications for adjustment and petitions for amendment—(a) Applications for adjustment—(1) When available. The Office of Price Administration may by order adjust any maximum price established by this regulation, whenever it finds, from an application for adjustment or on its own motion, that the price impedes or threatens to impede production of one or more nonferrous castings:

(i) The production of which, in the opinion of the Office of Price Administration, aids directly in the war program or is necessary to a standard of living consistent with the prosecution of the war, both because of (a) the type of casting produced, and (b) the necessity of continued production of the casting by the particular seller, or

(ii) The maximum prices of which, after adjustment, are as low as, or lower than, the prices which buyers would be required to pay to the seller's competitors if the seller ceased to produce the castings. Note, however, that not only the conditions of either this subdivision (ii) or the preceding subdivision (i) must be met; those of the following subparagraphs commencing with subparagraph (2) must also be met.

(2) Principal consideration. In deciding whether production is impeded or threatens to be impeded, principal consideration will be given to the overall profit or loss of the seller before income and excess profits taxes. Wherever possible, this consideration will be based on the seller's future annual

earnings (here called "projected profit") as estimated by the Office of Price Administration on the basis of the actual current earnings. The projected profit will be compared with the seller's average profit or loss for his fiscal years beginning between January 1, 1936 and December 31, 1939, adjusted for changes in invested capital. This average will be used as the base profit, except in those instances where the seller was not in business during a part or all of the base period, or where the average is lower than the earnings which the Office of Price Administration considers adequate for foundries of comparable size, in either of which cases a base profit which the Office of Price Administration considers adequate will be used.

(3) Other considerations. The relation of projected profit to base profit will be the principal consideration in determining whether production is impeded or threatens to be impeded, but other factors may be taken into consideration where relevant.

(4) Amounts of adjustment. Increases in price may be permitted in an amount considered sufficient by the Office of Price Administration to avoid the impeding of the production, or the threat to it.

(5) Prices pending disposition of application. Upon the filing of an application for adjustment or within five days prior thereto, and until final disposition of the application, contracts may be entered into or proposed and deliveries made at the prices requested in the application, except that the seller may not receive and the buyer may not pay the

amount by which the price exceeds the maximum price until an order granting the requested adjustment has been issued. Any sale, contract to sell or offer to sell at the price requested in an application shall include the following:

(i) The maximum price established for the casting in question.

(ii) A statement that the quoted price is subject to approval by the Office of Price Administration.

(iii) A statement that an appropriate application has been filed or will be filed within five days with the Office of Price Administration.

(6) Form of application. An application for adjustment shall be made on the applicable Forms OPA 677:115b and 677:115c or OPA 677:115d and 677:115e, as the case may be, set forth as §§ 1395.20 to 1395.23, inclusive, of this regulation. Such forms may be obtained from any regional office of the Office of Price Administration or may be copied by the applicant from this regulation. Every application for adjustment shall contain a statement, signed by the seller, that the statements made in the application are known by the seller or a duly authorized officer or partner of the seller to be true and complete.

(7) Place for filing application and number of copies. An original and one copy of an application for adjustment must be filed with the Office of Price Administration, Washington, D. C.

(8) Supplementary Order No. 9⁸ and Procedural

⁸F.R. 5444, 9323.

Regulation No. 6⁹ not to apply. Supplementary Order No. 9 issued by the Office of Price Administration dealing with applications for adjustment under Procedural Regulation No. 6, of maximum prices of sales pursuant to Government contracts or subcontracts shall not apply to applications for the adjustment of the maximum price of a nonferrous casting.

(b) Petitions for amendment. Any person seeking an amendment of any provision of this regulation may file a petition for amendment in accordance with the provisions of Revised Procedural Regulation No. 1 issued by the Office of Price Administration.

§ 1395.13 Records and reports. (a) Every person making a sale of nonferrous castings or a purchase in the course of trade or business shall keep available for inspection by representatives of the Office of Price Administration for so long as the Emergency Price Control Act, as amended, or any applicable part, amendment or supplement remains in effect:

(1) Complete and accurate records of each sale, showing (i) the date of the sale, (ii) the name and address of the other party to the sale, (iii) the net price received or paid after adjustment for all extra charges, discounts, or other allowances, (iv) the quantity and description of each type of nonferrous casting sold, and (v) in the case of the seller, a summary of the calculations made in figuring the

⁹⁷ F.R. 5087, 5664.

price charged (the summary of calculations may, when necessary, cover groups of castings sold at the same price); and

(2) All available records concerning sales and production, including costs, for the period after October 1, 1940.

(b) Such persons shall keep such other records and submit such other reports to the Office of Price Administration as the Office of Price Administration may from time to time require or permit, either in addition to or in substitution for records and reports required by this regulation.

§ 1395.14 Enforcement. (a) Persons violating any provisions of this regulation are subject to the criminal penalties, civil enforcement actions and suits for treble damages provided for by the Emergency Price Control Act of 1942, as amended.

(b) Persons who have evidence of any violation of this regulation or any price schedule, regulation or order issued by the Office of Price Administration, or of any acts or practices which constitute such a violation, are urged to communicate with the nearest district, state or regional office of the Office of Price Administration or its principal office in Washington, D. C.

§ 1395.15 Definitions. (a) When used in this regulation the term:

(1) "Person" includes an individual, corporation, partnership, association, or any other organized group of persons or legal successor or representative of any of the foregoing, and includes the

United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(2) "Nonferrous castings" include all rough and machined castings poured from metal at less than seventy-five pounds of pressure per square inch in any type of mold, (as for example, molds of sand, plaster, cement, metal or any other substance) and made from aluminum, antimony, beryllium, bismuth, cadmium, cobalt, copper, lead, magnesium, nickel (other than heat resisting or corrosion resistant alloys to the extent subject to Maximum Price Regulation No. 214¹⁰) tin, zinc, and their alloys where any one or any combination of the above metals equals or exceeds fifty per centum (50%) by weight of the total metal content and where use can be made of the casting without remelting, absorption in a chemical or plating process, extruding, drawing, rolling or forging into another form. The term "nonferrous casting" is also used to include a group of castings sold at the same price.

(3) "Sell or deliver any nonferrous casting" shall include a transaction in which the material for the casting is required to be sold or otherwise furnished to the seller by the buyer or any person on the buyer's behalf. In such case, the "price" under this regulation is the differential above the agreed cost of, or charge for the material, the intent here being to include under this regulation the so-

¹⁰⁷ F.R. 7001, 8948.

called "toll", "conversion" or "service" agreements.

(4) An individual casting is considered to be "of the same class" as another casting unless differences in design or specification, including quantity, imposed by the customer or by order of government agencies result in differences in size, weight, intricacy of design, tolerances, inspection requirements or process of production, involving differences in total cost of manufacture per pound of 5% or more (figured on the basis provided in § 1395.4). A group of castings sold at a flat price is considered to be "of the same class" as another group of castings unless on the average for the group as a whole differences in individual castings or changes in the relative proportions of the individual castings result in differences in weight or size per casting, intricacy of design, tolerances, inspection requirements, or process of production involving differences in total cost of manufacture per pound of the group of castings of 5% or more (figured on the basis provided in § 1395.4). A difference in alloy between the major groups of alloys listed in § 1395.3 (c) shall be considered to be a difference in process, but a difference within any such major group of alloys shall not be so considered, even though involving differences in total cost per pound of 5% or more (figured on the basis provided in § 1395.4).

(5) "This regulation" means this Revised Maximum Price Regulation No. 125.

(b) Unless the context otherwise requires, the

definitions set forth in section 302 of the Emergency Price Control Act of 1942, as amended, shall apply to other terms used herein.

§ 1395.16 Geographical applicability. The provisions of this regulation shall apply to the forty-eight states of the United States and to the District of Columbia.

§ 1395.17 Effective date. This regulation (§§ 1395.1 to 1395.23, inclusive) shall become effective February 1, 1943.

§ 1395.18 Appendix A: Former maximum prices for non-ferrous castings sold during the period May 11, 1942 to February 1, 1943, inclusive—(a) Castings the same or substantially the same as those sold or contracted to be sold to a purchaser of the same class during the period from October 1 to October 15, 1941, inclusive. The applicable maximum price for such castings was the highest net price (after adjustment for all applicable extra charges, quantity discounts, cash discounts or other allowances) at which the seller sold or contracted to sell such castings to a purchaser of the same class during the period from October 1 to October 15, 1941, inclusive.

(b) Castings substantially different from those sold or contracted to be sold during the period from October 1 to October 15, 1941, inclusive, or castings the same or substantially the same as those sold or contracted to be sold during said period, but sold to a purchaser not of the same class. The applicable maximum price for such castings was a net price

(after adjustment for all applicable extra charges, quantity discounts, cash discounts or other allowances) not in excess of that at which the seller would have sold such castings to a purchaser of the same class on October 15, 1941, under the pricing formula or method of calculating price that would have been used by the seller on October 15, 1941, employing the same cost factors (wage rates, prices of materials and overhead) and profit margins which the seller or the seller's transferor would have used on October 15, 1941, even though the seller's cost or profit margins might have increased since that date.

(c) Permission to certain sellers heretofore designated to sell certain castings at prices specified in paragraphs (a) to (k), inclusive of § 1395.2 of Maximum Price Regulation No. 125 (prior to this revision) and entitled "Exceptions" terminate on January 31, 1943. On and after February 1, 1943, such prices may, however, be used as the base price in figuring prices under § 1395.3 (a) of Revised Maximum Price Regulation No. 125.

§ 1395.19. Appendix B:

Budget Bureau Approval No. 08-R299-43.

OFFICE OF PRICE ADMINISTRATION
Washington, D. C.

Non-Ferrous Castings

Form OPA 677:115a

(Specified by Revised Maximum Price Regulation No. 125, § 1395.1 (b)).

Report on net sales for all non-ferrous foundries selling less than \$12,500 of non-ferrous castings in the preceding quarter.

File in the Washington office of OPA by the 20th of January, April, July and October.

Report for quarter ended 194...

Name of company:

Address:

City and State:

Net sales of all products: \$.....

Net sales of non-ferrous castings:;
(dollars).

..... (pounds).

Number of employees on pay roll for last week of the quarter:

The statements of fact in this report are known to the undersigned to be true and complete and the estimates given are believed to be correct.

Date:

(Signed)

(Title)

Note: Non-ferrous castings are defined in Revised Maximum Price Regulation No. 125. If the foundry sells other products besides non-ferrous castings, your best estimate of the volume of castings covered by this regulation is acceptable for the purposes of this form.

§ 1395.20 Appendix C:

Budget Bureau Approval No. 08-R290-43.

OFFICE OF PRICE ADMINISTRATION
Washington, D. C.

Non-Ferrous Castings
Form OPA 677:115b

(Specified by Revised Maximum Price Regulation No. 125, § 1395.12 (a) (6)).

Application for adjustment of maximum prices of an individual casting or a group of castings sold at the same price.

If adjustment is requested for all castings, use Form OPA 677:115d.

Note: The term "casting" refers to all castings of a particular design and specifications or a group of dissimilar castings to be sold at the same price per pound.

Fill out two copies of pages one and four for each application and two copies of pages two and three for each casting for which adjustment in price is requested.

Have each customer who buys the castings for which adjustment is sought fill in one copy of form OPA 677:115c and return it directly to the Washington office of OPA.

Name of company

Address

City and State

Type of business organization; Check one: Individual ☐ Partnership ☐ Corporation ☐.

For the definition of non-ferrous castings, see Revised Maximum Price Regulation No. 125.

A. Description of casting for which adjustment is requested:

(a) If this Application covers a group of castings to be sold at the same price per pound, or per piece, attach additional pages giving the following information for each casting in the group.

- (1) Customer
- (2) Address
- (3) Pattern No.
- (4) Description of casting
- (5) End use (W. P. B. definition)
- (6) Priority rating
- (7) Type of pattern
- (8) For how long a time have you made this casting?
- (9) Quantity ordered
- (10) Cores per casting
- (11) Method of molding: () Bench; () Floor;
() Machine; Other(specify).
- (12) Type of mold
- (13) Wt. per casting
- (14) No. per mold
- (15) a. If copper base, nearest OPA Ingot Identification No.
- b. If aluminum, customary trade designation No.
- c. If magnesium, ASTM No.

(b) If the casting was first made prior to February 1, 1943, is the alloy now used the same as that used prior to February 1, 1943? Yes No If the answer is "no," what alloy was used previously? Ingot Identification No. (as above):.....

B. Sales of casting for which adjustment is requested:

(1) Actual net sales of this casting last fiscal year ended.....;; (date) (pounds) (dollars).

(2) Actual net sales of this casting since end of last fiscal year—enter volume of sales at each different price which you charged.

Period covered—From To; Price per pound; Net sales in pounds—a., b., c., d.

(3) Estimated net sales of this casting for remainder of current fiscal year:.....(pounds).

Instructions for C—Reasons for requesting price adjustment.

Item—

(1) a. Column 1: Enter the purchase price used in arriving at your maximum price of one pound of metal. Insert in the note at the bottom of the table the date at which the metal price used actually prevailed in the market.

If the casting was sold or contracted to be sold October 1-15, 1941, or sold contracted to be sold or delivered May 11, 1942 to January 31, 1943, enter the price of the metal you then used in calculating the price of the casting.

If the casting was made prior to February 1, 1943,

and remade on or after February 1, 1943, and the alloy of which the casting was made was changed to another alloy within the same group of alloys as defined in Revised Maximum Price Regulation No. 125, enter the price of the alloy originally used and fill in Question A (b). If the alloy was changed to an alloy in another group, the casting may become a casting of a different class. See Revised Maximum Price Regulation No. 125.

If the casting was first made on or after February 1, 1943, enter the current price of the metal as in Column 2 (see below).

Column 2: Enter current purchase price of one pound of metal. If a composition of various metals or of scrap, virgin and ingot, or any combination thereof is now used, compute the current cost of the actual combination at present prices.

All other items in column 1—costs as of October 15, 1941; column 2—current costs.

(1) b. If you made separate allowance for metal loss on October 15, 1941, include here; otherwise, omit this item and include in melting cost (Item (1) c).

(1) c. Include cost of direct labor, fuel, crucibles, etc., used directly in melting and pouring. If this cost was not segregated on October 15, 1941, include this cost in General Foundry Overhead (Item 6).

(2) a., (3) a., (4) a., and (7) a. State cost of direct or production labor; do not include indirect labor. If wage rates of men actually employed on the job were used in calculating prices

on October 15, 1941, for Column 2 use current wage rates of men now actually employed on the job. If departmental or shop average wage rates were used on October 15, 1941, use department or shop average at current rates for Column 2. Overtime pay may be included in the average in Column 1 only if it was the foundry's practice to include such pay on October 15, 1941, but overtime pay may be included in figures in Column 2 in any case so that the average may reflect current costs accurately. If Item (4) a was not segregated on October 15, 1941, include this cost in General Foundry Overhead (Item 6).

(7) a. (7) b. If you figure machining on a machine-hour basis, combine Items (7) a and b.

(2) b., (3) b., (4) b., (7) b. and (11). Overhead should include indirect labor, incidental materials, and miscellaneous shop expenses. This form provides for the allocation of shop overhead costs on the basis of (A) a percentage of direct labor cost for each department, (B) a percentage of total direct labor costs of the entire foundry, and (C) for companies with accounts for foundry and machine shop combined, for the entire shop. The method which reflects most nearly the established practice of the foundry on October 15, 1941, should be used. If, for example, it was the practice to allocate overhead in whole or in part on the basis of (A), any or all of the items (2) b, (3) b, (4) b, and (7) b should be stated. On the other hand, if it was the practice to allocate all or some of the overhead on

the basis of (B) or (C), Items (6) and (11) should be used.

If you do not allocate overhead on a percentage basis but use a flat rate per hour or per day, cross out the percentage under "Items of Cost." Enter the rates per hour or per day, the poundage to which the rate applies and put the corresponding cost per pound in Columns 1 and 2.

(8) and (9) Include here any other shop costs which you considered separately on October 15, 1941, for example, pattern making, special rigging, special finishing, heat treating, x-raying, etc. Indicate what the items are.

(12) Enter here an allowance for imperfect castings, or indicate where else this item would be figured, as for instance, included in General Foundry Overhead (Item 6).

(14) This item should cover the administrative and selling overhead applicable to the production of non-ferrous castings covered by this Regulation. It should not include any allowance for profit or for income or excess profits taxes.

(15) Include cost of services purchased outside the company, such as pattern making, machining, etc. at their purchase cost plus whatever charges were added on October 15, 1941.

(16) If it was customary to sell at a delivered price on October 15, 1941, include an allowance for delivery charges here, if separately calculated.

(18) Profit at the rate provided on October 15,

1941—Do not include provision for Federal and State income and excess profits taxes.

(20) Column 1 only: If the casting was first made prior to February 1, 1943, enter $11\frac{1}{2}$ cents per pound for copper base alloys, 3 cents per pound for aluminum base alloys, and 3 cents per pound for magnesium base alloys, and subtract these amounts to arrive at the maximum price.

C. Reasons for requesting price adjustment:

In the following form fill in the factors entering into the pricing of the casting for which you are requesting price adjustment. In Column 1 give the cost factors as they are figured under Revised Maximum Price Regulation No. 125, that is, on the basis of costs on October 15, 1941, except for metal cost (see instructions); in Column 2 give the cost factors as you now figure them. Append a detailed explanation of any differences between Columns 1 and 2. If you are now certain that any of your costs will be different during the remainder of the current fiscal year, state these facts and give an estimate of the effect on pricing. If you have firm orders for this casting extending into the next fiscal year, state amount of those orders which will be delivered in the next year.

Read instructions on opposite page before filling in the form.
Pricing Sheet for Casting for Which Adjustment is Requested.
(All figures in cents per pound)

Items of cost	Column 1	Column 2
	Pricing on basis required by Re- vised MPR 125	Estimated cur- rent costs
(1) Metal:		
a. Purchase price*.....
b. Metal loss allowance.....
c. Melting cost
(2) Molding:		
a. Direct labor
b. Overhead @ %.....
(3) Coremaking:		
a. Direct labor
b. Overhead @ %.....
(4) Cleaning:		
a. Direct labor
b. Overhead @ %.....
(5) Total (1 through 4).....
(6) General Foundry Overhead @ %.....
(7) Machining:		
a. Direct labor
b. Overhead @ %.....
(8)
(9)
(10) Total (5 through 9).....
(11) General Manufacturing Overhead
(12) Allowance for Defective @ %.....
(13) Total Shop Cost (10 + 11 + 12)
(14) Administrative & Selling Overhead @ %.....
(15) Outside Services
(16) Delivery
(17) Total Cost (13 + 14 + 15 + 16)
(18) Profit
(19) Total (17 + 18)
(20) Metal Price Adjustment.....	x x x x x x x x
(21) Price Established by Rev. MPR 125.....	x x x x x x x x
(22) Price Requested	x x x x x x x x

*Date when price for metal quoted in Column 1 actually prevailed
in market

D. Financial data for the company:

If Financial Report Forms A and B have been submitted to OPA by the company for 1941 and any of the quarters of 1942, no information which duplicates material contained in these financial reports need be submitted; but a statement should be attached that, "Financial Report Form A (or B) has been submitted to OPA for [give fiscal period covered]."

(1) If the company sells only non-ferrous castings—

Submit balance sheets and related statements of profit and loss and surplus for each year 1936 through the most recent fiscal year and quarterly reports from the end of the last fiscal year through the most recent accounting period. Income statements should show the following items separately:

(a) net sales of non-ferrous castings in dollars and in pounds.

(b) costs of sales.

(i) wages; (ii) direct metal costs; (iii) other manufacturing costs.

(c) general selling and administrative expenses—State compensation of all officers and directors separately.

(d) amounts charged for depreciation (other than amounts included in (b)), amortization, contingencies and other reserves.

(e) net income before Federal and State income and excess profits taxes.

(f) net income after Federal and State income and excess profits taxes.

(2) If the company sells other products besides non-ferrous castings—

Submit for the periods stated in (1) balance sheets for the company as a whole; and related statements of profit and loss and surplus as follows:

(a) If the accounts are segregated for the foundry alone, give the statements for the foundry, and

(b) if the accounts are not segregated, present the statements for the company as a whole, showing thereon an allocation of the items listed in (1) for the foundry alone with the basis of allocation.

Give in addition the net book value of the plant devoted to foundry operations at each of the indicated periods.

The statements of fact in this report are known to the undersigned to be true and complete, and the estimates given are believed to be correct.

(Applicant)

By (Title).

§ 1395.21 Appendix D:

Budget Bureau Approval No. 08-R291-43.

OFFICE OF PRICE ADMINISTRATION

Washington, D. C.

Non-Ferrous Castings
Form OPA 677:115c

(Specified by Revised Maximum Price Regulation No. 125, § 1395.12 (a) (6)).

For Customers

Fill in the blanks in part (A) and ask each customer affected to answer the questions in part (B) and return the form directly to the Washington office of OPA.

A. The (name of foundry) is requesting a price increase from (....) cents per pound (or piece) to (....) cents per pound (or piece) on castings made from Pattern No.

B. (1) Name of customer

(2) Address of customer

(3) If foundry named in Part (A) stops supplying you, will you be able to secure needed supplies of castings from other foundries? Yes.... No.....

(4) If the answer to (3) is "no," is the reason—

(a) because there are no other foundries in your vicinity ().

(b) foundries in your vicinity do not have capacity to absorb your orders at present ().

(c) no other foundry can develop the necessary skill to make the castings in a reasonable length of time ().

(d) other (explain) .

(5) If the answer to (3) is "yes,"—

(a) Are the requested prices generally higher (), the same () or lower () than those at

which you can get the castings from other foundries?

(b) If the requested prices are higher or lower than those of other foundries, is the difference, 0-5% (), 5-10% (), more than 10% ()?

(Signed)

§ 1395.22 Appendix E:

Budget Bureau Approval No. 08-R292-43.

OFFICE OF PRICE ADMINISTRATION

Washington, D. C.

Non-Ferrous Castings

Form OPA 677:115d

(Specified by Revised Maximum Price Regulation No. 125, § 1395.12 (a) (6)).

Application for adjustment of maximum prices of all castings.

Fill out two copies of each page of this form. Fill in part (A) on six copies of Form OPA 667:115E and ask each of your six largest customers to fill in part (B) of one form and return it directly to this office.

Name of company

Address:

City and State:

Type of business organization; Check one: Individual () Corporation () Partnership ().

A. Amount of price increase requested and customers affected:

(1) State amount of price increase requested: (fill in one) cents per pound or percent of present prices.

(2) Estimated net sales from end of most recent accounting period to end of fiscal year: \$., at present prices. Most recent accounting period ended Fiscal year ends

(3) Attach a list of the names and addresses of your six largest customers.

B. Reasons for requesting price adjustment:

Attach a statement of the reasons for requesting price adjustments. Explain what conditions have arisen with respect to the business which make present prices yield an income inadequate to keep the foundry in business.

C. Financial data for the company:

If Financial Report Forms A and B have been submitted to OPA by the company for 1941 and any of the quarters of 1942, no information which duplicates material contained in these financial reports need be submitted; but a statement should be attached that, "Financial Report Form A (or B) has been submitted to OPA for [give fiscal period covered]."

(1) If the company sells only non-ferrous castings—

Submit balance sheets and related statements of profit and loss and surplus for each year 1936 through the most recent fiscal year and quarterly reports from the end of the last fiscal year through the most recent accounting period. Income state-

ments should show the following items separately:

(a) Net sales of non-ferrous castings in dollars and in pounds.

(b) Costs of sales—(i) Wages; (ii) Direct metal costs; (iii) Other manufacturing costs.

(c) General selling and administrative expenses—State compensation of all officers and directors separately.

(d) Amounts charged for depreciation (other than amounts included in (b)), amortization, contingencies and other reserves.

(e) Net income before Federal and State income and excess profits taxes.

(f) Net income after Federal and State income and excess profits taxes.

(2) If the company sells other products besides non-ferrous castings—

Submit for the period stated in (1) balance sheets for the company as a whole; and related statements of profit and loss and surplus as follows:

(a) If the accounts are segregated for the foundry alone, give the statements for the foundry, and

(b) if the accounts are not segregated, present the statements for the company as a whole, showing thereon an allocation of the items listed in (1) for the foundry alone, with the basis of allocation.

Give in addition the net book value of the plant devoted to foundry operations at each of the indicated periods.

The statements of fact in this report are known

to the undersigned to be true and complete, and the estimates given are believed to be correct.

(Applicant)

By (Title).

§ 1395.23 Appendix F:

Budget Bureau Approval No. 08-R293-43.

Office of Price Administration

Washington, D. C.

Non-Ferrous Castings

Form OPA 677:115e

(Specified by Revised Maximum Price Regulation No. 125, § 1395.12 (a) (6)).

For Customers

Fill in the blanks in part (A) and ask your six largest customers to answer the questions in part (B) and return the form directly to the Washington office of OPA.

A. The (name of foundry) is requesting a price increase of () percent or () cents per pound on all castings.

B. (1) Name of Customer:

(2) Address of Customer:

(3) If foundry named in Part (A) stops supplying you, will you be able to secure needed supplies of castings from other foundries? Yes No

(4) If the answer to (3) is "no," is the reason—

(a) because there are no other foundries in your vicinity ().

(b) foundries in your vicinity do not have capacity to absorb your orders at present ().

(c) no other foundry can develop the necessary skill to make the castings in a reasonable length of time ().

(d) other (explain).

(5) If the answer to (3) is "yes,"—

(a) On the whole are the requested prices higher (), the same () or lower () than those at which you can get the castings from other foundries?

(b) If the requested prices are higher or lower than those of other foundries, is the difference 0-5% (), 5-10% (), more than 10% ()?

(Signed)

Issued this 27th day of January 1943.

PRENTISS M. BROWN,
Administrator.

MPR 125

AMDT. 3

JAN. 13, 1944

JOINT EXHIBIT 5-E

Office of Price Administration

Advance Release:

OPA-T-1618

For Morning Papers,

Friday, January 14, 1944.

Amdt. 3 to MPR 125—Non-Ferrous Castings

Press Release

Cleared and issued through facilities of the Office of War Information.

A readjustment in the maximum prices for copper and copper base alloy castings that will restore part or all of the reductions made last February in ceilings for some types of castings was announced today by the Office of Price Administration.

On February 1, 1943, OPA explained, maximum prices for the castings were established generally as the seller's most recent prices in the base pricing periods of October 1-October 15, 1942, or May 11, 1942-January 31, 1943, less 1½ cents per pound. The 1½ cents per pound reduction was provided largely to pass on to buyers of castings the benefit of certain savings generally accruing to the non-ferrous foundry industry through lower raw material costs brought about by other OPA actions.

The new modified reductions were drawn after consultation with the OPA Industry Advisory Committee.

The modified reductions, OPA said, are based upon alloy specifications of castings, and are designed to approximate as closely as is feasible the actual savings to the foundry industry through OPA reductions in the price of raw materials.

The new modified reductions from base period prices, which replace the old flat 1½ cents per pound reductions, are as follows: On 85-5-5-5 or 88-10-2 specification castings, one cent a pound; on 80-10-10 and yellow brass group castings, 1¼ cents a pound, and on the silicon bronze groups, one cent a pound. In the case of 97 per cent copper specification castings, the 1½ cents per pound reduction is completely eliminated.

Copper and copper base alloy castings are used in the construction of ships, engines, tanks, airplanes, munitions, and other war goods, and for many civilian items, including valves.

(Amendment No. 3 to Revised Maximum Price Regulation No. 125—Non-Ferrous Castings. Effective February 1, 1944.)

Regulation

(Document No. 26640)

Part 1395—Nonferrous Foundry Products

[RMPR 125,¹ Amdt. 3]

Nonferrous Castings

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Section 1395.3 (b) is amended to read as follows:

(b) Second, reduce the base price in accordance with the following provisions of this paragraph (b). The base price to be reduced is the base price established before February 1, 1943; the reductions provided below are to be in place of (not in addition to) the reduction formerly required by this paragraph before the February 1, 1944 amendment of the paragraph.

Example. In the case of an 85-5-5-5 casting a reduction of only 1c per pound is now required. If the base price before February 1, 1943 was 21c per

*Copies may be obtained from the Office of Price Administration.

¹8 F.R. 1271, 2597, 2721.

pound, the price, before the February 1, 1944 amendment, was reduced by this paragraph to 19½c. The reduction now required is not subtracted from the 19½c but from the original 21c, making a present price of 20c.

(1) Amount of reduction. The amount of the reduction, except as provided by the further subdivisions of this paragraph (b), shall be as follows:

(i) If the specification calls for copper base alloy for the casting, the reduction shall be in the amount stated opposite the same specification indicated by OPA number of group below, or if the same specification is not indicated, then in the amount stated opposite the most nearly similar specification so indicated. (The OPA numbers refer to numbers used in Maximum Price Regulation No. 202,⁶ § 1309.165.)

	Reduction per pound, cents
(a) 85-5-5-5 or 88-10-2 groups (OPA Nos. 100-256, inclusive)	1
(b) 80-10-10 group (OPA Nos. 295-326, inclusive)	1¼
(c) Yellow brass group (OPA Nos. 400-409, inclusive)	1¼
(d) Silicon bronze group (OPA No. 500) ..	1
(e) All other copper base alloys (except copper content of 97% or greater)	1½
(ii) If the copper content specified for the casting is 97% or greater	No reduction

⁶ 7 F.R. 6421, 7247, 8948, 9427; 8 F.R. 1449, 4510.

Cents

(iii) If aluminum or aluminum base alloy is specified for the casting, the reduction shall be 3

(iv) If magnesium or magnesium base alloy is specified for the casting, the reduction shall be 3

(2) Specification is the test. In figuring the reduction under subparagraph (1), the test will be the metal specification for the casting to be priced. The test will not be the individual metal or metals (alloy, virgin or scrap) used in making up the specification.

Example. If the specification calls for 85-5-5-5 the reduction of 1c per pound is required even though the foundry is able to use virgin copper in part, in making the casting to the 85-5-5-5 specification.

The test, also, will be the specification of metal at the time of the pricing involved and not at the time the casting was made for the first time or at any other time in the past.

(3) Previous reduction and showing. If the base price already reflects reductions made because of reductions in the maximum prices of metals or alloys between September 30, 1941 and February 1, 1943, and full showing of the earlier reductions is first made (before collecting of the price) or has been made to the Office of Price Administration at Washington, D. C., the reductions under this paragraph (b) need only be made to the extent

that the previous reductions shows are less than the amounts required. A showing may be made by letter or the Office of Price Administration may provide a form for the purpose. Unless and until a showing is disapproved, the reductions need only be made to the extent that the previous reductions shown are less than the amounts required. However, if the showing is disapproved, refund must be made to the extent that the showing is disapproved, within ten days after the disapproval.

(4) "Toll" transactions. In the case of a "toll," "conversion" or "service" agreement, in which the metal or part of the metal for the castings is required to be sold or otherwise furnished to the seller of the castings by the buyer or by any person on the buyer's behalf, the reductions under this paragraph (b) need only be made to the extent of metal furnished by the seller.

(5) Choice in case of previous special price adjustment. A seller whose maximum prices have been adjusted by special order of the Office of Price Administration before February 1, 1944, is permitted to price castings made from copper or copper base alloys upon the basis of the reduction provided in this paragraph (b), instead of under the maximum prices as adjusted by the special order. However, if it is the seller's choice to price under this paragraph (b), he must make that choice for all his maximum prices and not just for some. If the seller does not make this choice, the seller must:

(i) Continue under the maximum prices provided in the adjustment order and

(ii) Must, in the case of copper and copper base alloy castings that are not covered by the adjustment order, figure his maximum prices on the basis of a reduction of 1½c per pound instead of the basis provided in this paragraph (b).

Any seller choosing to change from a basis of pricing under an adjustment order to the basis provided in this paragraph (b) must first send to the Office of Price Administration at Washington, D. C., a letter stating that he chooses to establish his maximum prices on the basis of reductions provided in this paragraph (b). The choice must be made and the letter stating the choice must reach the above office before March 1, 1944. The maximum prices as established under the choice will become effective when the seller receives acknowledgment of the letter from the above office.

This amendment shall become effective February 1, 1944.

Note: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(56 Stat. 23, 765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681)

Issued this 13th day of January 1944.

CHESTER BOWLES,
Administrator.

[Endorsed]: Filed Nov. 29, 1948.

[Title of Tax Court and Cause.]

Held, amount paid in settlement of alleged violation of Maximum Price Regulations of the Office of Price Administration is not an ordinary and necessary business expense of taxpayer's business.

Donald C. McGovern, Esq., for the petitioner.

H. A. Melville, Esq., for the respondent.

MEMORANDUM OPINION

VAN FOSSAN, Judge:

Respondent determined a deficiency in petitioner's income tax liability for the year 1944 in the amount of \$2,911.85. Petitioner alleges (1) that respondent erred in disallowing a deduction as business expense of the sum of \$13,071.08 paid in settlement of alleged violation of Maximum Price Regulations of the Office of Price Administration, and (2) in failing to allow the amount of \$13,071.08 as additional cost of goods sold.

On brief petitioner abandons the second allegation and contends that the payment should be allowed as a reduction or adjustment of sales income.

The case was submitted on stipulation of facts, which we adopt in toto as our findings of fact, the pertinent parts of which are as follows:

Petitioner is a corporation which filed its Federal tax returns for the calendar year 1944 with the collector of internal revenue for the sixth district of California at Los Angeles, California.

Petitioner keeps its books and records and files its Federal tax returns on the accrual basis.

The tax in controversy is income tax for the calendar year 1944 in the amount of \$2,911.85, which represents the deficiency determined by respondent.

During the period involved, petitioner was engaged in the business of making and selling non-ferrous castings of brass and bronze alloy.

Under the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress, 2nd Session), approved January 30, 1942, the Office of Price Administration was empowered to regulate the selling prices of certain products, including non-ferrous castings and the brass and bronze alloy ingots from which said castings are made.

The Office of Price Administration promulgated Price Regulation 202, dated August 13, 1942, effective August 19, 1942, which regulated the selling prices of brass and bronze alloy ingots and provided, in part, as follows:

Sec. 1309.151. On and after August 10, 1942, regardless of any contract * * * no person shall sell * * * at a price higher than the maximum price established * * *.

Said Regulation 202 further provided:

Sec. 1309.165—Appendix A. Maximum prices for brass and bronze alloy ingot. (a) Delivery charges. The maximum prices herein established for brass and bronze alloy ingot include transportation costs to any destination within the continental United States not exceeding 25 cents per hundred weight. Actual transportation costs in excess of

those so included may be charged to, and paid by, the buyer.

A schedule of maximum prices for various classifications of brass and bronze alloy ingots is thereafter set forth in the said Regulation 202.

Petitioner, at all times material hereto, purchased its requirements of brass and bronze alloy ingots from H. Kramer & Co., Chicago, Illinois.

The Office of Price Administration promulgated Revised Maximum Price Regulation 125 (hereinafter referred to as RMPR, 125) dated January 27, 1943, effective February 1, 1943, which established maximum selling prices of non-ferrous foundry products.

Said RMPR 125 reduced petitioner's maximum selling prices one and one-half cents per pound for the castings involved herein effective February 1, 1943. Petitioner was furnished a copy of said RMPR 125 and was aware of its provisions.

Petitioner did not reduce its prices to its customers as required by said RMPR 125.

Two O.P.A. investigators appeared at petitioner's office in the spring of 1944 and examined its books.

As a result of said examination, the O.P.A. alleged that petitioner had violated RMPR 125. In order to settle the O.P.A. claim, the petitioner issued its check, dated July 14, 1944, made payable to the order of the Treasurer of the United States in the amount of \$13,071.08, and was given a receipt therefor reading as follows:

Receipt

Received this 17th day of July, 1944 check No. 3539-E dated 7/14/44 in the sum of \$13,071.08, payable to the Treasurer of United States, from National Brass Works, Inc., of Los Angeles, California, in settlement of the Administrator's Claim for treble damages on account of violations of ceiling prices for non-ferrous castings under RMPR 125.

/s/ WM. H. BUCKINGHAM,
Enforcement Attorney.

In 1944 petitioner accrued on its books said \$13,071.08 as a business expense and deducted said sum in computing its income for Federal income tax purposes. The respondent, in his statutory notice of deficiency, disallowed said deduction with the following explanation:

(a) It is held that an item in the amount of \$13,071.08, representing 'Settlement of administrator's claim for treble damages on account of violation of ceiling prices,' and deducted by you in your income tax return for the taxable year 1944, is not deductible from gross income within the meaning of section 23 (a) or (f) of the Internal Revenue Code.

The aforesaid disallowance by respondent gave rise to the instant appeal, and the allowability thereof is the only issue involved herein.

The said \$13,071.08 was based upon sales made by petitioner, at prices in excess of the maximum prices established under RMPR 125, which sales were made during the period February 1, 1943 to

January 31, 1944, to customers who bought the castings for use or consumption in the course of their trade or business within the meaning of section 205 (e) of the Emergency Price Control Act of 1942.

We make the following ultimate findings of fact:

The payment of \$13,071.08 which was made to the O.P.A. in compromise of the Administrator's claim for treble damages was not an ordinary and necessary business expense of the petitioner within the meaning of section 23 (a) (1) (A), I.R.C.

Petitioner concedes on brief that this Court has decided three cases on comparable facts adversely to petitioner's position. These cases are: Scioto Provision Company, 9 T.C. 439; Garibaldi & Cuneo, 9 T.C. 446, and Jerry Rossman Corporation, 10 T.C. 468.

No arguments not heretofore fully considered by the Court in the above cited cases are presented by petitioner's brief. We adhere to the decisions in those cases and hold that respondent did not err in disallowing the claimed business expense.

We see no merit in petitioner's alternate contentions.

Decision will be entered for the respondent.

[Seal]: V.S.T.C.

Entered: Mar. 24, 1949.

Served: Mar. 24, 1949.

Received: Mar. 23, 1949.

The Tax Court of the United States, Washington

Docket No. 13434

NATIONAL BRASS WORKS, INCORPORATED,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the Court's determination as set forth in its Memorandum Opinion, entered March 24, 1949, it is

Ordered and Decided: That there is a deficiency in income tax of \$2,911.85 for the year 1944.

/s/ ERNEST VAN FOSSAN,

Judge.

Entered: Mar. 25, 1949.

Served: Mar. 25, 1949.

In the United States Court of Appeals
for the Ninth Circuit

No. 13434

NATIONAL BRASS WORKS, INC.,
Petitioner,

vs.

COMMISSIONER ON INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

I.

Jurisdiction

National Brass Works, Inc., the petitioner on review (hereinafter referred to as Petitioner) respectfully petitions this Honorable Court to review a decision of the Tax Court of the United States, entered March 25, 1949, determining a deficiency in petitioner's income tax for the year 1944 in the amount of \$2,911.85 and respectfully shows:

Petitioner is a California corporation, with its principal office located at 2140 East 25th Street, Los Angeles 11, California.

The Commissioner on review (hereinafter referred to as the respondent) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

The corporate income tax return of petitioner for the year 1944 was filed with the United States Collector of Internal Revenue for the Sixth District of California at Los Angeles, the office of said Collector being located within the judicial circuit of the United States Court of Appeals for the Ninth Circuit.

The Commissioner determined a deficiency in income tax for the year 1944 in the sum of \$2,911.85, and on January 21, 1947, sent to the petitioner by registered mail a notice of said deficiency. Thereafter, petitioner filed an appeal from said notice of deficiency with the Tax Court of the United States. On March 24, 1949, the Tax Court promulgated its Findings of Fact and Opinion in said appeal, and on March 25, 1949, entered its final decision in said appeal, whereby said Tax Court ordered and decided that there was a deficiency of \$2,911.85 for the year 1944.

Jurisdiction to review said decision of the Tax Court of the United States arises from Sections 1141 and 1142 of the Internal Revenue Code.

II.

Nature of Controversy

The issue involved in this proceeding is as follows:

Is \$13,071.08 paid in 1944 by petitioner to the Office of Price Administration in settlement of the Administrator's claim for treble damages (under Section 205(e), Emergency Price Control Act of 1942) on account of violations of ceiling prices for

non-ferrous castings under revised maximum price regulation 125: (1) Deductible as a business expense under Section 23(a), Internal Revenue Code, or (2) A reduction or adjustment of sales income?

During the period involved, petitioner was engaged in the business of making and selling non-ferrous castings of brass and bronze alloy.

Under the Emergency Price Control Act of 1942 (Public Law 421-77th Congress, 2nd Session) approved January 30, 1942, the Office of Price Administration was empowered to regulate the selling prices of certain products, including non-ferrous castings and the brass and bronze alloy ingots from which said castings are made.

The Office of Price Administration promulgated Price Regulation 202, dated August 13, 1942, effective August 19, 1942, which regulated the selling prices of brass and bronze alloy ingots and provided, in part, as follows:

“Sec. 1309.151. On and after August 10, 1942, regardless of any contract * * * no person shall sell * * * at a price higher than the maximum price established * * *.”

Said Regulation 202 further provided:

“Sec. 1309.165-Appendix A. Maximum prices for brass and bronze alloy ingot. (a) Delivery charges. The maximum prices herein established for brass and bronze alloy ingot include transportation costs to any destination within the continental United States, not exceeding 25 cents per hundred weight. Actual transportation costs in excess of those so

included may be charged to, and paid by, the buyer.’’

A schedule of maximum prices for various classifications of brass and bronze alloy ingots is thereafter set forth in the said Regulation 202.

Petitioner, at all times material hereto, purchased its requirements of brass and bronze alloy ingots from H. Kramer & Co., Chicago, Illinois. The said Regulation 202 reduced Kramer Co.’s prices to petitioner up to one and one-half cents per pound on bronze and brass alloy ingots.

Prior to August 19, 1942, Kramer Co. did not charge transportation costs separately to petitioner. After August 19, 1942, and during the period involved herein Kramer Co. charged transportation costs of three-fourths cent per pound to petitioner and billed these costs separately, making a net reduction in price to petitioner not in excess of three-fourths cent per pound instead of one and one-half cents per pound.

The Office of Price Administration promulgated Revised Maximum Price Regulation 125 (hereinafter referred to as RMPR 125), dated January 27, 1943, effective February 1, 1943, which established maximum selling prices of non-ferrous foundry products.

Said RMPR 125 reduced Petitioner’s maximum selling prices one and one-half cents per pound for the castings involved herein, effective February 1, 1943. Petitioner was furnished a copy of said RMPR 125 and was aware of its provisions.

Petitioner did not reduce its prices to its customers as required by said RMPR 125, because the net reduction in price by Kramer Co. to petitioner was three-fourths cent per pound or less, whereas RMPR required petitioner to reduce its price a full one and one-half cents per pound.

Two O.P.A. investigators appeared at Petitioner's office in the spring of 1944 and examined its books.

As a result of said examination, the O.P.A. alleged that Petitioner had violated RMPR 125. In order to settle the O.P.A. claim, the Petitioner issued its check, dated July 14, 1944, made payable to the order of the Treasurer of the United States in the amount of \$13,071.08, and was given a receipt therefor reading as follows:

“Receipt

Received this 17th day of July, 1944 check No. 3539-E dated 7/14/44 in the sum of \$13,071.08, payable to the Treasurer of United States, from National Brass Works, Inc., of Los Angeles, California, in settlement of the Administrator's Claim for treble damages on account of violations of ceiling prices for non-ferrous castings under RMPR 125.

/s/ WM. H. BUCKINGHAM,
Enforcement Attorney.”

In 1944, Petitioner accrued on its books said \$13,071.08 as a business expense and deducted said sum in computing its income for Federal income tax purposes. The Respondent, in his statutory Notice of Deficiency, disallowed said deduction with the following explanation:

“(a) It is held that an item in the amount of \$13,071.08, representing ‘Settlement of administrator’s claim for treble damages on account of violation of ceiling prices’ and deducted by you in your income tax return for the taxable year 1944, is not deductible from gross income within the meaning of section 23(a) or (f) of the Internal Revenue Code.”

The said \$13,071.08 was based upon sales made by Petitioner at prices in excess of the maximum prices established under RMPR 125, which sales were made during the period February 1, 1943, to January 31, 1944, to customers who bought the castings for use or consumption in the course of their trade or business within the meaning of Section 205(e) of the Emergency Price Control Act of 1942.

III.

Assignments of Error

Petitioner says that the Tax Court erred in the following respects:

1. In deciding that the payment of \$13,071.08 which was made to the Office of Price Administration in compromise of the administrator’s claim for treble damages was not an ordinary and necessary

business expense of petitioner within the meaning of Section 23(a)(1)(A), Internal Revenue Code, because it was a penalty payment instead of a payment of damages; and

2. In deciding that the payment of \$13,071.08 made to the Office of Price Administration was not a reduction or adjustment of sales income under the Emergency Price Control Act of 1942, as amended. Only the administrator of OPA could make a claim against petitioner for damages on account of the overcharges, and the administrator was the only one with whom petitioner could make an adjustment in its selling prices, because the items involved were sold to customers who bought them for use or consumption in the course of their trade or business within the meaning of Section 205(e) of the Emergency Price Control Act of 1942, as amended.

Wherefore, your Petitioner prays that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit, and that a transcript of the record be prepared in accordance with the law and rules of said Court of Appeals and transmitted by the Clerk of the Tax Court to the Clerk of said Court of Appeals for filing, and that appropriate action be taken to the end that the errors complained of be reviewed and corrected by said Court of Appeals.

/s/ DONALD C. McGOVERN,
Attorney for Petitioner
on Review.

VERIFICATION OF PETITION
FOR REVIEW

State of California,
County of Los Angeles—ss.

Donald C. McGovern, being duly sworn, says that he is the attorney for petitioner on review and as such is duly authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

/s/ DONALD C. McGOVERN.

Subscribed and sworn to before me this 1st day of June, 1949.

[Seal] /s/ PATRICIA P. WHITWORTH,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 4, 1949.

Received June 3, 1949.

[Endorsed]: Filed June 3, 1949.

The Tax Court of the United States, Washington
Docket No. 13434

NATIONAL BRASS WORKS, INC.,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 28, inclusive, constitute and are all of the original papers and proceedings on file in my office as the original and complete record in the proceeding before The Tax Court of the United States entitled: "National Brass Works, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 13434, and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 15th day of July, 1949.

[Seal] /s/ VICTOR S. MERSCH,
Clerk,
The Tax Court of the
United States.

[Endorsed]: No. 12295. United States Circuit Court of Appeals for the Ninth Circuit. National Brass Works, Inc., a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed July 21, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12295

NATIONAL BRASS WORKS, INC.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

Point I.

The payment of \$13,071.08 by petitioner in 1944 to the Administrator of OPA in settlement of his claim for treble damages on account of overcharges made to customers is not the payment of a penalty, but is an ordinary and necessary business expense

deductible from petitioner's gross income under Section 23(a), Internal Revenue Code.

Point II.

Even if the above payment be considered the payment of a penalty, its allowance as a business expense deduction would not frustrate any sharply defined policies of the Emergency Price Control Act of 1942, under authority of which the Administrator accepted payment to him of the overcharges in settlement of his claim for damages. Therefore, this payment is deductible from petitioner's gross income in 1944 as a business expense under Section 23(a), Internal Revenue Code.

DESIGNATION OF ALL OF THE RECORD WHICH IS MATERIAL TO THE CONSIDERATION OF THIS REVIEW

The Record which is material to the consideration of this Review and which should be printed is as follows:

Description	Document No. in Tax Court Clerk's Typewritten Record on Appeal
1. Names and addresses of attorneys.....	
2. Petition	2
3. Answer	3
4. Stipulation of Facts with Exs. 1-A to 5-E, inclusive	17
5. Memorandum Opinion	21

6. Decision	22
7. Petition for Review	23
Clerk's Certificate	

Dated this 22nd day of June, 1949.

/s/ DONALD C. McGOVERN,
TODD W. JOHNSON,
DONALD C. McGOVERN,
EDWARD D. ROBERTSON,
Attorneys for Petitioner.

State of California,
County of Los Angeles—ss.

Joy Neeleman, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 433 South Spring Street, Los Angeles 13, Calif., that on the 22nd day of July, 1949, affiant served the within Statement of Points and Designation of Record on the Respondent in said action, by placing a true copy thereof in an envelope addressed to the Commissioner of Internal Revenue in care of his attorneys, Theron L. Caudle, Assistant Attorney General, Department of Justice Building, Washington 25, D. C., and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Internal Revenue Building, Washington 25, D. C., and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, Califor-

nia, where is located the office of the attorneys for the persons by and for whom said service was made.

That there is delivery service by the United States mail at the place so addressed or there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ JOY NEELEMAN.

Subscribed and sworn to before me this 22nd day of July, 1949.

[Seal] /s/ PATRICIA P. WHITWORTH,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 4, 1949.

[Endorsed]: Filed July 25, 1949.

